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SUPREME COURT OF THE UNITED STATES.

No. ~~196~~. 117.

THE UNITED STATES, Appellants,

vs.

ROBERT B. NELEIGH.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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SUPREME COURT OF THE UNITED STATES.

No. 196.

THE UNITED STATES, Appellants,

vs.

ROBERT B. NELEIGH.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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OFFICE OF THE BOARD OF COMMISSIONERS.

To ascertain and settle the Private Land Claims in the State of California.

Be it remembered, that on this third day of September, Anno Domini one thousand eight hundred and fifty-two, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:—

The petition of Rob't B. Neleigh for land on the San Joaquin River was presented, and ordered to be filed and docketed with No. 320, and is as follows, to wit:

(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

San Francisco, March 10th, 1853.

In case No. 320, Rob't B. Neleigh for lands on the San Joaquin River, the deposition of L. D. Wilsonhaler, a witness on behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 4 of this transcript.)

San Francisco, Sept. 2d, 1853.

In the same case, the deposition of J. J. Warner, a witness on behalf of the claimant, taken before Commissioner Thompson Campbell, was filed.

(Vide page 5 of this transcript.)

San Francisco, February 22d, 1854.

In the same case, the deposition of M. B. Lewis, a witness on behalf of the claimant, taken before Commissioner Alpheus Felch, with documents marked A, F, Nos. 1, 2, 3, 4, annexed thereto, was filed.

(Vide page 6 of this transcript.)

San Francisco, March 31st, 1854.

In the same case, the deposition of Antonio Maria Pico, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed.

(Vide page 10 of this transcript.)

San Francisco, April 1, 1854.

In the same case, the deposition of Juan B. Alvarado, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed.

(Vide page 12 of this transcript.)

San Francisco, November 22d, 1854.

In the same case, the counsel for the claimant filed the following papers as evidence in this case, to wit:—

A.—Exemplified copy of the will of Bernard McKenzie.
(Vide page 33 of this transcript.)

B.—Conveyance from Jose Castro and Modesto Castro to McKenzie & Neleigh. (Vide page 15 of this Transcript.)

C.—Conveyance from Jane McKenzie to Robert B. Neleigh.
(Vide page 25 of this Transcript.)

San Francisco, November 25, 1854.

Case No. 320 was ordered to be placed at the foot of the 3d class cases on the Trial Docket.

San Francisco, December 19, 1854.

Case No. 320 was submitted under the rule of 21 March, 1854.

San Francisco, May 8, 1855.

In the same case Commissioner S. B. Farwell delivered the opinion of the board confirming the claim.
(Vide page 45 of this Transcript.)

And the following order was made, to wit:—
(Vide page 50 of this Transcript.)

(Petition.)

To the Honorable the Board of United States Land Commissioners appointed to settled private land claims in California.

The petition of Robert B. Neleigh respectfully showeth, that he is the claimant of six leagues of land in Mariposa County, being part of a tract of eleven leagues of land on the San Joaquin River, whose measurement is to be commenced from the edge of the Snowy or Sierra Nevada mountains, following down stream; that the same was granted to Lieutenant Colonel Jose Castro by Governor Pio Pico on the 4th day of April, A.D. 1846, by virtue of the Colonization laws of August 18th, 1824, and the instructions and regulations of November 21st, 1828, and the various laws of Mexico affecting grants of land in California:

That on the 8th day of June, A. D. 1849, the said Jose Castro and Modesto Castro, by deed, conveyed unto your petitioner and Bernard McKenzie six leagues of the said eleven leagues of land, with a covenant in said deed contained giving the privilege to said McKenzie and your petitioner to make their selection of the aforesaid six leagues from any part of said rancho that they may choose:

That on the 8th day of April, 1852, Jane McKenzie, the widow of said Bernard McKenzie (he being previously dead), conveyed, by deed, unto your petitioner all the right, title, and interest of said Bernard McKenzie in and to the said six leagues of land—said

lands have not been surveyed by the United States Surveyor General.

There is no conflicting claim to them known to your petitioner. The evidence upon which your petitioner relies are the records of this grant in the office of the Surveyor-General of the United States for California, original papers, copies of which are herewith filed, and to which your petitioner prays leave to refer as part of this petition for greater certainty, and the testimony of witnesses to be produced before your honorable board respectfully submitted for such action as the justice and nature of the claim may require.

E. O. CROSBY, of Counsel.

Filed in office September 3d, 1852.

GEO. FISHER, Secretary.

Recorded on Record of Petitions, vol. 1, p. 215, 216.

GEORGE FISHER, Secretary.

(Deposition of L. D. Vinsonhaler.)

San Francisco, March 10th, 1853.

On this day, before Commissioner Hiland Hall, came L. D. Vinsonhaler, a witness on behalf of the claimant, Robert B. Neleigh, petition Number 320, and was duly sworn, his evidence being given in English.

The United States Associate Law Agent was present.

In answer to inquiries by the counsel for the claimant, the witness testified as follows:—

My name—L. D. Vinsonhaler; my age is forty years; I reside in Mariposa County; I came to California in 1846; I know the rancho called San Joaquin; it is in Mariposa County; it is on both sides of the River San Joaquin, and runs with the meandering of the river from the edge of the Table Mountain downward to the westward; the Table Mountain is at the foot of the Snowy Mountain. It was granted, as I understand, to General Jose Castro; Castro took possession in the latter part of August or September, 1849, and built a corrall and had cattle there in the early part of the year 1850. I was at the place in October, 1849, and found the place occupied as before stated.

It has been occupied by him and those claiming under him ever since; at the time of taking possession of the land in 1849, the nearest settlement was at Mariposa town, 40 miles distant; and it would have been unsafe, in consequence of the liability of the wild Indians, to have attempted to occupy it earlier.

L. D. VINSONHALER.

Sworn and subscribed before me. HILAND HALL, Commissioner.

Filed in office March 10th, 1853. GEORGE FISHER, Secretary.

Recorded in Evidence, vol. 2, page 641.

GEO. FISHER, Secretary.

(Deposition of J. J. Warner.)

Office of Commissioners of Land Claims in California.

This day came before Commissioner Thompson Campbell, J. J. Warner, a witness in behalf of claimant, Robert B. Neleigh, case number 320, who, after being duly sworn, deposed as follows:—

What is your name, age and place of residence?

My name is J. J. Warner. My age is forty-five. My place of residence is San Diego.

Have you examined a paper now in the archives in the custody of the Surveyor-General of the United States for California, of which the paper now shown you, and marked exhibit A, in this case, purports to be a traced copy? if yes, state when you made such examination, and are the names of Pio Pico, Jose Martino Morano, W. H. Halleck their genuine signatures, and have you seen them all write?

I examined the said paper this morning in the office of the Surveyor-General. I am acquainted with the signatures of the signers to the document, and have seen them write, and believe them to be their genuine signatures.

J. J. WARNER,
Law Agent present.

Sworn and subscribed before me this 2d day of September, A. D. 1853.

THOMPSON CAMPBELL,
Commissioner.

Filed in office September 2d, 1853.

GEO. FISHER, Secretary.

Recorded in Evidence B, vol. 3, page 125.

GEO. FISHER, Secretary.

United States Land Commission, San Francisco, February 22, 1854.

On this day, before Commissioner Alpheus Felch, came M. B. Lewis, a witness in behalf of the claimant Robert B. Neleigh, case number 320, who, after being duly sworn, deposed as follows:—

Questions by Mr. Crozly, attorney for claimant.

1 Question. Please state your name, age and place of residence.

Answer. My name is M. B. Lewis. My age about forty-eight years, and I reside in Maraposa County, California.

2d Question. State if you know the rancho of the River San Joaquin, claimed by Robert B. Neleigh, the claimant in this case; if so, state what you know of its location and boundaries.

Answer. I know the rancho mentioned. It is located in Mariposa County, and on the San Joaquin River, which runs through it and divides it nearly in the centre. I surveyed the upper six leagues of the land untraced in said record, in the last days of March and the first days of April, 1853. At that time I was the Deputy County Surveyor of Mariposa county.

3d Question. Look on the document now here presented, purporting to be a map of the land surveyed by you as above mentioned, marked

exhibit No. 1, with the initials A. F. and hereunto attached, and also on the document here presented, purporting to be the field notes of said survey, marked exhibit number 2, with the initials A F also hereto attached, and state what they are.

Answer. I have examined them. The first is a map made by me a few days after the survey mentioned in the answer to the second interrogatory. The map is made according to the said survey and the field notes taken at the time, and correctly delineates the location of the land and the course of the San Joaquin River.

The second document presented is the field notes of said survey as made by me; the lines, courses and distances, and the meandering of the San Joaquin River, were actually run and made by me, and are correctly stated in these field notes. The survey was made by me at the request of Robert B. Neleigh, the claimant in this case.

4th Question. What governed you in the location and survey of the land?

Answer. I was governed by a certified copy of the original title, and by the instructions of Captain L. D. Vinsonhaler, who professed to know the original location of it. I found no difficulty in locating the land by the calls of the title as appeared in the certified copy which I had. The paper which is now presented, and which is marked exhibit number 3 unto the initials A F attached to this deposition, I believe to be the certified copy in the Spanish language which I had at the time. I used an English translation, and I believe the paper also hereto attached and marked exhibit number 4, with the initials A F, to be the translation which I then had in my hands and used in making the survey.

As soon as I examined the title I knew that that was the ground where it was located. I could have located the land by the calls of the patent without the information given by Vinsonhaler. I am well acquainted with that particular portion of the country, and had at that time been acquainted with it over two years.

Questions by Mr. McKune, Law Agent.

1 Question. Does the tract surveyed by you comprise a portion of the gold mining district?

Answer. It does, two or three miles of the land on the upper end of it, and on the river is mining land.

2 Question. Read from Exhibit No. 4 above mentioned and used by you in the survey, the calls from which you say you could have located the tract without the information given by Vinsonhaler?

Answer. The followings and tracts on the banks of the River San Joaquin consisting of eleven leagues, whose measurement is to be commenced from the edge of the Snowy Mountains following down stream; and also the following words in the condition of the grant, to wit: The land of which donation is made consists expressly of eleven sitios, ranges of large cattle on the banks of the River San Joaquin; and its measurement shall commence from the edge of the Sierra Nevada:

I consider the calls sufficient to locate the land as I surveyed it. I should not have located it on both sides of the river (San Joaquin), if it had not been for the word banks (in the plural) in the grant.

3 Question. Was there anything in particular to take you to the place marked in your map by the figure 1 as the starting-point of your survey?

Answer. I considered from the reading of the title, if there was any difference in the country about there, that place had the preference. Captain Vincenhaler pointed that spot out to me as being the place where Castro selected as the upper line. He went to the spot and said, here is about the place that Castro had either shown him, or intended his upper line to be. I cannot say which expression he used.

4 Question. What determined you in your direction from station marked Number 1 on the map to station Number 2?

Answer. I determined that direction by running the line as near as I could parallel to the general course of the river as far down as station Number 2.

5 Question. What determined you in the length on the river of the location of the land?

Answer. The length of the land was determined by the description in the grant, which I understood it to require it to be one league only in width.

6 Question. Why was not the extension or length of the land made at right angles to and across the river instead of being along its banks?

Answer. For the reason that I understood the location of the land to be along the river one league in width, and not across it.

7 Question. Do the mountains called the Sierra Nevada extend parallel with said river at each side of it, and opposite your location of this land?

Answer. Said mountains and the broken hills do.

8 Question. How many English acres have you calculated on a square league on the return and map of your survey?

Answer. I think it is four thousand three hundred and fifty acres.

9 Question. In your plat and survey did you regard eleven sitios mentioned in the grant as equivalent to eleven square leagues?

Answer. I did. M. B. LEWIS.

Subscribed and sworn to before me, this twenty-second of February, 1854. ALPHEUS FELCH, Commissioner.

Filed in office February 22d, 1854.
GEORGE FISHER, Secretary.

Recorded in Evidence B, volume 3, page 744.
GEORGE FISHER, Secretary.

(Depo. of A. M. Pico.)

United States of America, State of California.

San Francisco, March 31, 1854.

This day personally came before me, Peter Lott, a commissioner for taking testimony to be used before the board of United States land commissioners, in said State, Antonio Maria Pico, a witness in behalf of the claimant in case No. 320, in which Robert B. Neleigh is claimant.

And the said Pico being duly sworn, deposed in Spanish, which was interpreted into English by the interpreter to said board, as follows, to wit:—

The United States law agent being present.

Questions by E. O. Crosby, Esq., attorney for claimant.

1 Quest. What is your name, age, and present place of residence?

Answer. My name is Antonio Maria Pico; my age 44 years; my residence, San Jose, Santa Clara County, California.

2 Question. State if you know the rancho of the River San Joaquin, claimed by Robert B. Neleigh in this case. If yea, state what you know of its location and boundaries?

Answer. I do know the rancho of the River San Joaquin spoken of. It is on the River San Joaquin, where the said river runs out of the Sierra Nevada, on the margin of the same. I was there in 1844, and Jose Castro, the General, told me the boundaries.

3 Question. State what you know of the occupation of said rancho of the River San Joaquin by Jose Castro?

Answer. I was on the place in 1844, and Castro then had on it a house, which he occupied himself, with his servants; he had cattle and horses. I know of four hundred head of cattle he had there, which I sent him from San Jose. He had also corrals on the land.

Cross-examined by United States Law Agent.

1 Question. Where did Jose Castro's family reside at that time?

Answer. His family lived in Monterey.

2 Question. How far up in the mountains was this house from the plain, and do the Sierra Nevada mountains lie on each side of the rancho the whole length of it?

Answer. The house is near the margin of the river, on the plain, a little below the mountains. Jose Castro told me, when I was there, that his land was on both sides of the river.

ANTONIO MARIA PICO.

It is stipulated between the law agent and E. O. Crosby, Esq., that this deposition may be read and considered as taken in evidence, the same as if re-taken in case number 693, in which Jose Castro and others are claimants.

J. H. McKUNE, Law Agent.
E. O. CROSBY, Attorney for Claimants.

Subscribed and sworn to, by the above named witness, before me, on this 31st day of March, A. D. 1854. PETER LOTT,
Commissioner for taking testimony, &c.

Filed in office March 31, 1854. GEO. FISHER, Sec'ry.

Recorded in evidence B, vol. 4, page 141.
GEO. FISHER, Sec'ry.

(Depo. of J. B. Alvarado.)

United States of America, State of California, *ss.*
San Francisco, April 1, 1854.

This day personally came before Peter Lott, a commissioner for taking testimony to be used before the board of United States land commissioners, in said State, Juan B. Alvarado, a witness in behalf of the claimant in case number 320, on the docket of said board, in which Robert B. Neleigh is claimant. And the said Juan B. Alvarado being duly sworn on oath, deposed in Spanish, which was interpreted into English by the interpreter to said board, as follows, to wit:—

The United States law agent is present.

Questions by E. O. Crosby, Esq., attorney for claimant.

1 Question. What is your name, age, and place of residence?

Answer. My name is Juan B. Alvarado; my age fifty-five years; my present residence Contra-Costa county, California.

2 Question. State if you know the rancho of the River San Joaquin, claimed to have been granted by Jose Castro in this case. If yea, state what you know of its location and boundaries?

Answer. I merely know that the rancho lies on the margin of the River San Joaquin, but I do not know its boundaries.

3 Question. State what you know of the location of this rancho by Jose Castro, and by what authority?

Answer. In 1844 Jose Castro was appointed by Michelterrena to go with some troops and occupy the margin of the River San Joaquin. This took place during the last six months of that year: Jose Castro passed by my rancho near Monterey, being on his way for this purpose, and he confidentially showed to me his military instructions which he had from Michelterrena.

In a part thereof he promised to said Castro to grant to him eleven leagues of land wherever he should locate himself with the said troops, stipulating to give him a title afterward, in remuneration for the military and civil services which he had performed to the country. I afterwards learned that Castro established himself at a place of the River San Joaquin, erected houses, built corrals, and had cattle there, and that soon after he retired from thence by order of Michelterrena, leaving the place. This was in consequence of some political disturbances which occurred in the Department.

4 Question. State what were the public services rendered the

Mexican Government by General Jose Castro, of which you have spoken in this deposition?

Answer. Since the year eighteen hundred and thirty-four I think he was a member of the Territorial Deputation. He was next political chief ad interim, of the Territory, and afterward held different military offices up to the grade of lieutenant-colonel, till he was colonel commandant of the military forces at Monterey, and finally general commandant of the forces in California during the war with the United States.

Cross-examined by United States Law Agent.

1 Question. Had said Castro a family; if yea, where did they reside?

Answer. Yes he had; they lived at Monterey.

2 Question. Where was his residence in eighteen hundred and forty-four, eighteen hundred and forty-five, and eighteen hundred and forty-six?

Answer. He was on the rancho of San Joaquin in eighteen hundred and forty-four; in the latter part of that year he was ordered by Michelterrena to evacuate that part of the country, and he went wherever his command was ordered. His family was in Monterey; he was moving about with the army.

3 Question. From whom did you learn Castro had established himself at San Joaquin?

Answer. It was a thing very well known; a great many persons were passing who spoke of the fact, and it was never disputed. I do not recollect who first mentioned it to me after Castro himself.

4 Question. In 1844, 1845 and 1846 did said Castro hold by grant from government any other land, and if yea, where, and how much?

Answer. I do not recollect now distinctly whether he did or not. This land on the San Joaquin was conceded by Michelterrena for Castro's former services to the country. From that concession, by the usages and laws, Castro had a right to make the selection and settlement as he did, and acquired by doing so the right to demand a confirmation of his title from the Mexican government.

JUAN B. ALVARADO.

Subscribed and sworn to before me on this 3d day of April, A.D. 1854.

PETER LOTT,
Commissioner for taking testimony.

At the request of the law agent and the counsel for the claimant, I hereby certify that they have agreed that the foregoing deposition should be considered as taken and read in evidence also on case No. 693 on the docket. PETER LOTT, Commissioner, &c.

Filed in office April 3, 1854. GEO. FISHER, Secretary.

(B. Deed.)

Quit-Claim Deed.

Know all men by these presents, that we, Jose Castro of the jurisdiction of Monterey, in Upper California, and Modesta, the wife of the said Jose Castro, in consideration of the sum of one thousand dollars to us in hand paid by Bernard McKenzie and Robert B. Neleigh, on the Mocalimy River in Upper California, the receipt whereof we do hereby acknowledge, have bargained, sold, and quit-claimed, and by these presents do bargain, sell and quit claim unto the said Bernard McKenzie and Robert B. Neleigh, and to their heirs and assigns forever, all of our right and each of our rights, title, interest, claim and demand, both at law and equity as well as in possession as in expectancy of, in, and to all that certain six leagues of the rancho known as the rancho of the River San Joaquin, with the privilege of said Bernard McKenzie and Robert B. Neleigh making their selection of the aforesaid six leagues from any part of said rancho that they may choose.

Said rancho consists of eleven leagues, and was granted by Pio Pico, governorof California, to Gen'l Jose Castro, on the 4th day of April, A. D. one thousand eight hundred and forty-six, with all and singular the hereditaments and appurtenances thereunto belonging.

In witness whereof, we have hereunto set our hands and seals this eighth day of June, A. D. one thousand eight hundred and forty-nine.

JOSE CASTRO. [SEAL.]
MODESTA CASTRO. [SEAL.]

District and Town of Monterey, California, *ss.*

I hereby certify, that on the eighth day of June, A. D. 1849, before me personally appeared Jose Castro and Modesta his wife, to me known to be the individuals described in, and who executed the within indenture, and severally acknowledged the same to be their act and deed.

And the said Modesta, on a private examination by me apart from her husband, and acknowledged that she executed the same freely and without any fear or compulsion of her husband.

JABEZ HALLECK, Commissioner of Deeds
for the District of Monterey, California.

Monterey, June 8th, 1849.

Recorded in my office, in Monterey, California, this eighth day of June, A. D. 1849, and the record deposited in the office of the Secretary of State for California.

JABEZ HALLECK,
Notary Public in and for the District of Monterey.

Filed May 28, 1853, Saturday, at 8½ o'clock A. M., and recorded at request of Captain Vinsonhaler. Book A, folio 218.

EDW'D C. BELL, Recorder,
Mariposa County.
By CHARLES GRAY, Dep. Recorder.

Filed in office November 22, 1854.

GEO. FISHER, Secretary.

[For map see original, between pages 19 and 20.]

(Exhibit No. 2, A. F.)

Survey of six leagues of land for Robert B. Neleigh and others, situated on the banks of San Joaquin River, in the county of Mariposa, being part of eleven leagues of land, granted Jose Castro by Pio Pico, constitutional Governor of the department of California, at Los Angeles, on the 4th day of April, A. D. 1846.

Beginning at an oak, 15 inches diameter, blazed on four sides, bearing from Fort Miller N. 35 W. 107 chains.

Courses.	Distances. Chs.	Lks.	Lewis ran to true meridian, variation 14° 35.
Thence N. 27° 00 W.	129	00	to Left bank of San Joaquin, timber oak, land mountainous.
	133	54	to Right " "
	134	15	to 1st corner, post in a mound " an oak 30 in. diam. N. 13° 30 W. 1 37, and an oak 20 in. diam. N. 43 00 W. 2 chs. 38 links.
Thence S. 63 00 W.	8	00	to Foot of high mountain.
	210	43	2 corner, a post in a mound, timber oak, land unlevel.
Thence S. 47° 00 W.	127	46	to Cottonwood Creek, 30 links wide, runs east.
	261	18	to 3 cor., a post in a mound, timber oak.
Thence S. 22° 00 W.	332	63	to 4 corner, a mound and a post, land level and good for small grain.
Thence S. 35° 00 W.	240	00	to 5 corner, a post in a mound, land level and good for small grain.
Thence S. 40° 00 W.	172	93	to 6 corner land level, and good for small grain.
Thence S. 50° 00 E.	141	23	to Right bank of San Joaquin.
	145	81	to Left bank " "
	214	64	to 7 corner, a post in a mound, land level and rich. 8 corner, a post in a mound, land level

Courses.	Distances. Chs. Lks.	Lewis ran to true meridian, variation 14° 35.
Thence N. 40° 00 W.	188 13	and good for small grain.
Thence N. 35° 00 E.	240 00	to 9th corner, a post in a mound, land level.
Thence N. 21° 00 E.	150 66	to Dry Creek, 35 links wide, runs southwest.
	186 03	to Oak 30 in. diam., live tree.
	276 08	to 10 corner, a post in a mound, land level and good for small
Thence N. 40° 00 E.	67 34	to grain.
	208 00	to Large quartz vein, timber.
	215 07	to 11 corner, a post in a mound, land unlevel.
Thence N. 63° 00 E.	126 24	to Timber oak, Fort Miller Garrison, a small branch.
	210 43	to 12 corner, a post in a mound; timber, oak; land very unlevel, interspersed with small rich valley.
Thence N. 27° 00 W.	76 27	to Beginning; timber, oak; land mountainous.

About half of this survey is river bottom and first-rate land; about half the upland is good for small grain. All the bottom and a considerable portion of the upland is susceptible of irrigation. Timber on the river bottom, oak, cottonwood, sycamore and ash. Vegetation, clover and grass of various kinds, affording seeds and roots which serve the Indians for food during summer and fall; after which time they resort to the acorn, which is abundant.

Finished this survey April 2d, 1853. M. B. LEWIS,
Deputy Surveyor M. Co.

Meanders of San Joaquin River, down, beginning on upper line, left bank.

Courses.	Chns.	Lks.	Courses.	Chns.	Lks.
1, S. 11° 00′ E.	25	13	13, N. 88 00 W.	25	13
2, S. 5 00 W.	32	62	14, N. 61 00 W.	18	94
3, S. 17 30 E.	37	50	15, N. 70 30 W.	24	48
4, S. 1 00 W.	36	26	16, S. 57 00 W.	24	39
5, S. 31 30 W.	8	05	17, S. 26 30 W.	29	33
6, S. 35 00 W.	12	21	18, S. 52 00 W.	26	52
7, S. 68 00 W.	37	87	19, S. 40 30 W.	11	36
8, S. 62 00 W.	9	26	20, S. 21 00 W.	8	83
9, S. 82 00 W.	13	38	21, S. 31 30 W.	9	26
10, S. 83 30 W.	9	08	22, S. 36 30 W.	23	02
11, N. 65 00 W.	5	96	23, S. 40 00 W.	13	05
12, N. 81 00 W.	10	95	24, S. 58 00 W.	9	26

	Courses.			Chs.	Lks.
25,	S. 50	00	W.	75	78
26,	S. 33	00	W.	50	52
27,	S. 15	00	W.	57	87
28,	S. 66	00	W.	33	04
29,	S. 85	00	E.	21	88
30,	S. 42	00	E.	9	26
31,	S. 23	30	E.	22	13
32,	S. 6	00	E.	9	00
33,	S. 25	00	W.	8	40
34,	S. 47	30	W.	12	60
35,	S. 67	30	W.	29	63
36,	S. 29	00	W.	19	24
37,	S. 54°	00′	W.	41	69
38,	S. 34	00	E.	11	36
39,	S. 8	30	W.	4	76
40,	S. 4	00	E.	7	51
41,	S. 2	00	W.	21	04
42,	S. 3	30	W.	27	36
43,	S. 24	00	W.	10	32
44,	S. 38	00	W.	21	88
45,	S. 1	00	W.	10	64
46,	N. 61	00	W.	28	19
47,	S. 63	00	W.	25	89
48,	South,			38	69
49,	S. 52	00	W.	80	73
50,	S. 40	00	W.	29	59
51,	S. 4	30	E.	22	91
52,	S. 20	00	E.	9	55
53,	S. 52	00	E.	21	04
54,	S. 1	30	E.	54	78
55,	S. 20	00	W.	12	21
56,	S. 44	00	W.	18	52
57,	S. 40	00	W.	11	38
58,	S. 55	00	W.	37	87
59,	S. 38	00	W.	31	44
60,	S. 68	30	W.	44	05
61,	S. 5	05	W.	18	68
62,	S. 30	00	W.	35	95
63,	S. 64	00	E.	15	36
64,	S. 77	00	E.	28	62
65,	S. 25	00	E.	9	05
65,	S. 37	00	W.	9	34
67,	S. 70	00	W.	18	04
68,	West.			Lower line of	
69,	S. 33	00	W.	this survey.	
70,	S. 5	00	W.		
71,	S. 68	00	W.		
72,	N. 84	00	W.		

(11 S. D. K.)

Gobierno del Depart. de Californias.

Pio Pico, Gobernador constitutional del departmento de Californias.

Por cuanto el teniente coronel de Cal'a D. Jose Castro, ciudadano Mejicano ha solicitado para su beneficio personal y el de su familia un terreno para criadero de ganadas en las magines del Rio de San Joaquin compuesto de once sitios que comenzaron a medirse desde la orilla de la Sierra Nevada Rio abajo practicadas previmente las avereguaciones y han sido necessarias ha venido por decreto de este dia en conceder al espresado Señor las once sitios y pretende de darandole la propiedad de ellos por las presentes letras de conformidad con la ley de 18 de Augusto, 1821, y reglamento de 21 de Nov'r de 1828, conforme a las faculdades con que nu hallo autorizado por el supremo gobierno á nombre de la nacion á reserva de la approbacion de la Ex'ma Asemblea Departmental y bajo las conditiones sequientes.

1° Podra cercar los sin prejudicar las travasius caminas y servidumbres: los disfrutura libre y esclusiveamente destinandolos al uso que sea conveniente.

2° Solicitara del Juez respectivo le de la posicion Juridica in vir-

tud de este despacho por el cual se le demarcacion los linderas con las respectivos moyoneros poniendo á mas de ellos algunas arboles frutales o de conoceda utilidad.

3° El terreno de que se hace donacion es puramente de once sitios de ganada Mayor en las margines del Rio de San Joaquin y comensara su medicion desde la orilla de la Sierra Nevada. El Juez que dere la posesion lo hara medir conforme a ordinanza y a vista del diseño ó plano topograficaque presentara el agraciado.

En consequencia mando que teniendose el presente titulo por firme y valedero se tome razon de el en el libro a que corresponde y se entregue al interesado para su resguardo y demas finur.

Dado en la casa de Gobierno en la ciudad de las Angeles, en papel comun por no haber Schudo, a las cuatro dias del mes de Abril de mil ochocientos cuarenta y seis. PIO PICO.

JOSE MATHIAS MORENO.

Queda tomada razon de este superior despacho en el libro respetivo.
MORENO.

Deposited in the Government archives this 8th day of June, 1849, by Bernardo McKenzie. H. W. HALLECK,
Brev't Capt. and Sec'y of State.

Office of the Surveyor-General of the United States for California.

I, Samuel D. King, Surveyor-General of the United States for the State of California, and as such now having in my office and under my custody a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby certify that the writing on the three preceding and hereunto annexed pages of tracing paper, numbered 1, 2, and 3, and each of which is verified by my initials (S. D. K.), is truly copied from a document on file, and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal (not having a seal of office), at the city of San Francisco, Cal., this ninth day of July, 1852.

SAMUEL D. KING,
Surveyor-General, Cal.

Filed in office September 3d, 1852.
GEO. FISHER, Secretary.

(Translation of Grant.)

[SEAL.] Pio Pico, Constitutional Governor of the Department of the Californias.

Whereas the Lieutenant-Colonel of Cavalry, Don Jose Castro, Mexican citizen, has petitioned for the benefit of himself and his family for a tract of land for pasturing cattle on the banks of the River San Joaquin, consisting of eleven leagues, whose measurement is to be commenced from the edge of the Snowy Mountains, following

down stream; having previously made the necessary investigations, I have by decree of this day granted to the said Señor the eleven sitios he prays for, declaring to him the ownership thereof by these present letters, in conformity with the law of the 18th of August, 1824, and the regulations of 21st November, 1828. In conformity with the powers with which I find myself invested by the Supreme Government in the name of the nation.

Under reservation of the approval of the Departmental Assembly and under the following conditions:—

1st. He may fence it without injury to the crossings, highways, and rights of way; he may enjoy it freely and exclusively, devoting it to the best cultivation or use which may be to his convenience.

2d. He shall request the judge of that district to give him juridical possession by virtue of these presents, who shall work out the boundaries with the respective landmarks, placing in addition to them some fruit trees, or others of known utility.

3d. The land, of which donation is made, consists expressly of eleven (sitios) ranges of large cattle upon the banks of the River San Joaquin, and its measurement shall commence from the edge of the Sierra Nevada.

The judge who may give the possession, shall have it measured with entire observance of these directions, and in view of the sketch or topographical plan which the grantee shall present. In consequence whereof, in order that the present title being held as firm and valid, be recorded in the corresponding book and delivered to the party in interest, for his protection and other purposes.

Given in the Government House, at the city of Los Angeles, upon common paper, there being none stamped, on the fourth day of the month of April, one thousand eight hundred and forty-six.

PIO PICO.

JOSE MATIUS MORENO,
Secretary pro tem.

Record has been taken of this Supreme Patent in the respective book.

Filed in office September 3d, 1852.

GEO. FISHER, Secretary.

(Copy Deed from McKenzie to Neleigh.)

This indenture, made and entered into by and between Jane McKenzie, of the city of New York, of the first part, and Robert B. Neleigh, of Santa Clara county, California, of the second part, Witnesseth, that the party of the first part, for and in consideration of the sum of ten hundred and twenty-eight dollars to her in hand duly paid, receipt whereof is hereby acknowledged, have remised, released, and forever quit-claimed unto the party of the second part, his heirs, executors and administrators, forever, and do by these presents remise, release, and forever quit claim unto the said second party, all her right and interest in and to a certain tract or parcel

of land, lying and being situate on the River San Joaquin, and known as the rancho of the River San Joaquin, containing an undivided half of six leagues, formerly deeded from Jose Castro to Bernard McKenzie and Robert B. Neleigh:

Together with all and singular the rights and privileges in anywise appertaining: to have and to hold the same as fully as they were held by the party of the first part, unto the party of the second part, his heirs, executors and administrators, forever.

Witness my hand and seal this eighth day of April, A. D. 1852.

JANE McKENZIE. [L. S.]

Attest: FREDERICK HALL.

State of California, County of Santa Clara, *ss:*

On this 8th day of April, A. D. 1852, personally appeared before me, a notary public in and for the said county, Jane McKenzie, known to me to be the same person described in, and who executed the foregoing instrument, who acknowledged to me that she executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my [SEAL.] official seal at San Jose.

FREDERICK HALL,
Notary Public.

Filed in office September 3d, 1852.

GEO. FISHER, Secretary.

(C. Deed.)

This Indenture, made and entered into by and between Jane McKenzie, of the city of New York and State of New York, of the first part, and Robert B. Neleigh, of Santa Clara county, California, of the second part:

Witnesseth, that the party of the first part, for and in consideration of the sum of two hundred and twenty-eight dollars to her in hand duly paid, receipt whereof is hereby acknowledged, have remised, released and forever quit-claimed unto the party of the second part, his heirs, executors and administrators, forever, and by these presents remise, release, and forever quit claim unto the second party, all her right and interest in and to a certain tract or parcel of land lying and being situate on the River San Joaquin, and known as the rancho of the River San Joaquin, containing one undivided half of six leagues formerly deeded from Jose Castro to Bernard McKenzie and Robert B. Neleigh, together with all and singular the rights and privileges thereunto belonging or in anywise appertaining: to have and to hold the same as fully as they were held by the party of the first part, unto the party of the second part, his heirs, executors and administrators, forever.

Witness my hand and seal this eighth day of April, A. D. 1852.

JANE McKENZIE. [SEAL.]

Attest: FREDERICK HALL.

State of California, County of Santa Clara, *ss:*

On this eighth day of April, A. D. 1852, personally appeared before me, a notary public in and for the said county, Jane McKenzie, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that she executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed my official seal at San Jose.

FREDERIC HALL, Notary Public.

Filed Saturday, May 28th, 1853, at 8½ o'clock A. M., and Recorded at request of Captain Vincenhaler, Book A, folio 219.

EDWD. C. BELL, R. M. Co.

By Charles Gray, Deputy Recorder, Mariposa Co. Fees $2.25.

Filed in office November 22d, 1854.

GEO. FISHER, Secretary.

(Copy Deed from Jose Castro and wife to McKenzie and Neleigh.)

Quit Claim Deed.

Know all men by these presents, that we, Jose Castro of the Jurisdiction of Monterey, in Upper California, and Modesta, the wife of the said Jose Castro, in consideration of the sum of one thousand dollars to us in hand paid by Bernard McKenzie and Robert B. Neleigh, on the Mocalimy River, in Upper California, the receipt whereof we do hereby acknowledge, have bargained, sold and quit-claimed unto the said Bernard McKenzie and Robert B. Neleigh, and to their heirs and assigns, forever, all our and each of our right, title, interest, estate, claim and demand, both at law and in equity, as well as in possession as in expectancy of, in, and to all that certain six leagues of the rancho known as the rancho of the River San Joaquin:

With the privilege of the said Bernard McKenzie and Robert B. Neleigh making their selection of the aforesaid six leagues from any part of said rancho that they may choose.

Said rancho consists of eleven leagues, and was granted by Pio Pico, Governor of California, to General Jose Castro, on the fourth day of April, A. D. one thousand eight hundred and forty-six, with all and singular the hereditaments and appurtenances thereunto belonging.

In witness whereof we have hereunto set our hand and affixed our seals the eighth day of June, A. D. one thousand eight hundred and forty-nine.

JOSE CASTRO. [L. S.]

MODESTA CASTRO. [L. S.]

District and Town of Monterey, California, *ss:*

I hereby certify that on this eighth day of June, A. D. 1849,

before me personally appeared Jose Castro and Modesta his wife, to me known to be the individuals described in, and who executed the within indenture, and severally acknowledged the same to be their act and deed; and the said Modesta, on private examination by me apart from her husband, also acknowledged that she executed the same freely and without any fear or compulsion of her said husband.

Monterey, June 8th, 1849.

JABEZ HALLECK,
Commissioner of Deeds for the District of Monterey, California.

Recorded in my office, Monterey, California, this eighth day of June, A. D. 1849, and the record deposited in the office of the Secretary of State for California. JABEZ HALLECK,
Notary Public in and for the District of Monterey.

Filed in office September 3d, 1852.

GEO. FISHER, Secretary.

(Exhibit No. 3—A. F.)

Pio Pico, Gobernador Constitucional del Departmento de California.

Por cuanto el Teniente Cor'l de Cab'a D. Jose Castro, ciudadano Mejicano ha solicitado para su beneficio personal y el de su familia sur terreno para criadero de ganada en las magines del Rio de S. Joaquin compuesto de once sitios que comengaran a medirse desde la orilla de la Sierra Nevada Rio abajo practicadas previamente averiguaciones que han sido necesarios ha venido por decreto de este dia en consider le el espesado Señor las once sitios que pretende declarando le ba propiedad de ellas por las presentes letras de conformidad con la ley de 18 de Agosto de 1824 y reglamenta de 21 de Noviembre de 1828 conforme a las facultades con que me hallo autorizado por el supremo Gobierno a nombre de la Nacion a resavade la aprobacion de la ex'ma Asemblea Departmental y bajo las condiciones seguientes.

1o. Podra circarlas sin prejudicar las travasias caminos y servidumbres lo desfrutara libre y esclusivamente des tinaro dolos al mejor cultivo y uso q. le sea conveniente.

2o. Solicitara del Juez respectivo le dile posecion juridica en virtud de este despach por el cual se demarcaran los linderas con los respectivos moyoneras poniendo a mas de ellos algunos arboles frutales ó de conocido utilidad.

3o. El terreno de q. se hace donacion espresa-espresamente de once sitios de ganada mayor en los magines del Rio de San Joaquin y comenzara su medicion desde la orilla de la Sierra Nevada. El Juez que diera la posecion lo hara medir conforme a ordinanza y a vista del deseño o plano topografia que presentera el a graciado.

En consecuencia mando que teniendose el presente titulo por firme y valedeno se tome razon de el en el libro y q. corresponde y se entregue el interesado para su reguardo y de mas pius.

Dado en la case de Gobierno en la ciudad de los Angeles en papel comun pro no haber de sellado a las quatro dias del mes de Abril de mil ochocientos cuarente y seis. (Sgd.) PIO PICO.

JOSE MATHIAS MORENO.

Queda tamado razon de este superior despacho en el libro respectivo.

(Sgd. MORENO.

Deposited in the Government archives this 8th day of June, 1849, by Bernard McKenzie. H. W. HALLECK,

B't Capt'n and Sec'ry of State.

I certify that the foregoing is a true copy from the records of this office. State Dep't, Cal., Monterey, June 8, 1849.

H. W. HALLECK,

B't Capt'n and Sec'y of State.

Filed in office February 22d, 1854.

GEO. FISHER, Sec'y.

(Exhibit No. 4—A. F.)

Pio Pico, Constitutional Governor of the Department of
[GREAT SEAL.] the Californias.

Whereas the Lieutenant-Colonel of Cavalry, Don Jose Castro, Mexican citizen, has petitioned for the benefit of himself and his family for a tract of land for pasturing cattle on the banks of the River San Joaquin, consisting of eleven leagues, whose measurement is to be commenced from the edge of the Snowy Mountains, following down stream. Having previously made the necessary investigations, I have, by decree of this day, granted to the said Señor the eleven sitios he prays for, declaring to him the ownership by these present letters, in conformity with the law of the 18th of August, 1824, and regulations of the 21st of November, 1828.

In conformity with the powers with which I find myself invested by the Supreme Government in the name of the nation, under reservation of the approval of the Departmental Assembly, and under the following conditions:

1. He may fence it without prejudice to the cross-roads, highways, and rights of way; he may enjoy it freely, and exclusively, devoting it to the best cultivation or use which may be to his convenience.

2. He shall request the judge of that district, by virtue of these presents, juridical possession, who shall mark out the boundaries with the respective landmarks, placing, in addition to them, some fruit trees, or others of known utility.

3d. The land, of which donation is made, consists expressly of eleven (sitios) ranges of large cattle upon the banks of the River San Joaquin, and its measurement shall commence from the edge of the Sierra Nevada. The judge who may give the possession, shall have it measured with entire observance of the ordinances and in

view of the sketch or topographical plan which the grantee shall present.

In consequence whereof, in order that the present title being held as firm and valid, be recorded in the corresponding book and delivered to the party in interest, for his protection and other purposes.

Given in the Governor's house at the city of Los Angeles, upon common paper, there being none stamped, on the fourth day of the month of April, one thousand eight hundred and forty-six.

PIO PICO.

JOSE MATIAS MORENO,
Secretary pro tem. (Inp.)

Record has been taken of this superior patent in the respective book. MORENO.

Filed in office February 22d, 1854.

GEO. FISHER, Secretary.

A.

(Will of B. McKenzie, and letters testamentary thereon.)

Be it remembered, that heretofore, to wit, on the fourteenth day of July, in the year one thousand eight hundred and fifty-one, Jane McKenzie, an executrix named in the last will and testament of Bernard McKenzie, late of the county of New York, deceased, appeared, in open court, before Alexander W. Bradford, surrogate of the county of New York, and made application to have the said last will and testament, and a codicil thereto, proved; and in such application the surrogate did ascertain, by satisfactory evidence, who were the widow, heirs, and next of kin of said deceased, and their respective residences.

And some of them appearing to be minors, having no general guardian residing in the State of New York, a special guardian was appointed in due form of law to take care of their interests in the matter of proving said will, by an order duly entered for that purpose by said surrogate; and said surrogate thereupon issued citation in due form of law, directed to the said heirs and next of kin by their respective names, stating their places of residence, requiring them to appear before said surrogate, at his office in the city of New York, on the 28th day of July, then instant, to attend to the probate of said will; and afterwards, to wit, on the said 28th day of July, satisfactory evidence by affidavit was adduced and presented to said surrogate of the service of the said citation in the mode prescribed by law.

And on that day, no one appearing to oppose the probate of said will, such proceedings were thereupon had afterwards, that said surrogate took the proofs of said will hereinafter set forth; and upon this twenty-eighth day of July, in the year one thousand eight hundred and fifty-one, he adjudged said will to be a valid will of real

and personal estate, and the proofs thereof to be sufficient, which said last will and testament and proofs are as follows, that is to say:

The last Will and Testament of Bernard McKenzie, of the City of New York.

I, Bernard McKenzie, of the city, county, and State of New York, do make, publish, and declare this my last will and testament, in manner and form following, that is to say:

I give, devise, and bequeath unto my father and mother, Roger and Ann McKenzie, the use and occupation of the apartments in the premises belonging to me, and which they now occupy, to have and hold and use the same, free of rent, for and during the term of their, or either of their natural lives.

And I do also give and bequeath unto my said father and mother annually, the sum of two hundred dollars, so long as they shall live; and in case of the death of either of my said father or mother, then my will is, and I direct that the said sum of two hundred dollars shall be paid annually out of my estate to the survivor of them, so long as he or she shall live.

I do hereby direct and request, that my sister Margaret, so long as she shall live with my wife, be supported out of my estate, in such manner as to my said wife shall seem meet and proper.

I do hereby give, devise, and bequeath unto my executrix hereinafter named, all my real estate situate, lying and being in the State of California, which said real estate I am now unable particularly to describe:

In trust, to grant, bargain, sell and convey the same, in fee simple, and either at public or private sale, and upon such terms and conditions as to my said executrix shall deem to be most advantageous, and for the best interest of my said estate; and out of the proceeds arising from such sale or sales of said real estate, to pay off, satisfy and discharge such mortgages, liens or incumbrances which now exist, or which may exist and be upon such real estate as I shall die seised or possessed of in the city of New York; and in case any surplus shall remain, after the payment, satisfaction and discharge of such mortgages, liens or incumbrances, then my will is, that such surplus shall be deemed to be, and taken and considered as a part of the rest, residue, and remainder of my said estate, and to be distributed in such shares and proportions as I shall hereinafter dispose of.

Such rest, residue and remainder of my said estate, and as to all the rest, residue and remainder of my said estate, both real and personal, wheresoever the same shall be situated, after the payment of my just debts and funeral expenses, I give, devise, and bequeath unto my beloved wife Jane, and to my sons John Bernard, James Thomas, William Riley, George Rodger, and my daughters Mary Jane and Ann Eliza, and to such other child or children that shall be borne to me after my decease, to them, their heirs and assigns,

for ever, in equal proportions, share and share alike; and in case any or either of my said children shall die before attaining the age of twenty years, and without bearing lawful issue, then my will is that the share or portion of my said estate so given to such child or children as shall die as aforesaid, shall go to and be divided amongst such of my children as shall survive, and their heirs, in equal proportions, share and share alike.

And I do hereby declare that the provisions herein, in this my will contained and made for my said wife, is to be taken by her and accepted in lieu of her right of dower or thirds of, in, or to my said estate, and any part thereof.

And I hereby commit the guardianship of all my children until they shall respectively attain the age of twenty-one years, unto my said wife; and do hereby declare, that the expenses of the maintenance and education of my said children, until they shall attain the age aforesaid, shall be paid and come out of the respective shares of my estate, given to them respectively in and by this my will; and I do hereby nominate, constitute and appoint my beloved wife Jane sole executrix of this my last will and testament; hereby revoking all other or former wills by me at any time made.

I declare this, and this only, to be my last will and testament.

In witness whereof, I have hereunto set my hand and seal, this second day of July, in the year one thousand eight hundred and fifty-one. B. McKENZIE. [L. S.]

The above instrument was, at the date thereof, signed and sealed by the testator, Bernard McKenzie, in our presence, and he at the same time declared it to be his last will and testament, and we at his request, and in his presence, and in the presence of each other, have subscribed our names hereto as attesting witnesses.

JOHN L. CHACE,
147 Hammond Street, New York City.

RODGER McKENZIE,
10 Duane, New York.

GEORGE P. NELSON,
97 West 13th Street, New York City.

In my last will, signed by me July 2d, 1851, I, the undersigned, had forgotten to express my sentiments and will with regard to the religious education of my children.

I do, therefore, solemnly declare, that it is my earnest request, that all and every one of my children be brought up and educated in the holy Roman Catholic religion. To that effect, I do hereby freely appoint my brother, Thomas McKenzie, guardian of my children, with full power to adopt the most efficient measures in order to secure the desirable object of their timely Catholic education, by placing them in Catholic colleges, or other Catholic institutions of learning. If my children should be deprived of the advantages of a

Catholic education, my brother Thomas is earnestly required by me to do his duty of mutual guardian over my children, and devise proper means to secure to them full benefit thereof.

In testimony whereof, I signed while in the enjoyment of my full senses.

July 4th, 1851. BERNARD his × mark. McKENZIE. [L. S.]

JOHN CASSIDY. RODGER McKENZIE.
JOHN McKENZIE. JOSEPH D. LUTZ.

In the matter of proving the last will and testament of Bernard McKenzie, deceased, as a will of real and personal estate.

Examination of witnesses sworn and examined in the above entitled matter.

County of New York, to wit:

John L. Chase, of the city of New York, being duly sworn as a witness in the above entitled matter, and examined on behalf of the applicant to prove said will, says: I was well acquainted with Bernard McKenzie, now deceased. I knew the said deceased before his death; the subscription of the name of said deceased to the instrument now shown to me, and offered for probate as his last will and testament, and bearing date the second day of July, in the year one thousand eight hundred and fifty-one, was made by the deceased at the city of New York, in the presence of myself, Rodger McKenzie, George P. Nelson, the other subscribing witnesses at the time of making such subscription: the said deceased declared the said instrument so subscribed by him to be his last will and testament, and I thereupon subscribed my name as a witness at the end of said instrument, at the request of said decedent, and in his presence. The said decedent, at the time of so executing said instrument, was upwards of the age of twenty-one years, and of sound mind, memory, and understanding, and not under any restraint, or in any respect incompetent to devise real estate. I also saw said Rodger McKenzie and George P. Nelson, the attesting witnesses, sign their names as witnesses at the end of said will, and know that they did so at the request of said decedent, and in his presence. JOHN L. CHASE.

Sworn this 28th day of July, 1851, before me.
A. W. BRADFORD.

In the matter of proving the last will and testament of Bernard McKenzie, deceased, as a will of real and personal estate.

Examination of witnesses sworn and examined in the above entitled matter.

County of New York, to wit:

Rodger McKenzie, of the city of New York, being duly sworn as a witness in the above entitled matter, and examined in behalf of the

applicant, to prove said will, says: I was well acquainted with Bernard McKenzie, now deceased; I knew the above named decedent for many years before his death. The subscription of the name of said decedent to the instrument now shown to me and offered for probate as his last will and testament, and bearing date the second day of July, one thousand eight hundred and fifty-one, was made by the decedent at the city of New York, in the presence of myself, John L. Chase, and George P. Nelson, the other subscribing witnesses; at the time of making such subscription, the said decedent declared the said instrument so subscribed by him, to be his last will and testament; and I thereupon signed my name as a witness at the end of said instrument, at the request of said decedent, and in his presence. The said decedent, at the time of executing said will, was upwards of the age of twenty-one years, and of sound mind, memory, and understanding, and not under any restraint, or in any respect incompetent to devise real estate. I also saw said John L. Chase and George P. Nelson, the other attesting witnesses, sign their names as witnesses at the end of said will, and know that they did so at the request of said decedent, and in his presence; and I further state, that the subscription of the names of said decedent to the instrument now shown to me, and offered for probate, as a codicil to his last will and testament, and bearing date the fourth day of July, in the year one thousand eight hundred and fifty-one, was made by the decedent, at the city of New York, by making his mark in the presence of myself, John McKenzie, Joseph A. Lutz, and John Cassidy, the other subscribing witnesses; at the time of making such subscription, the said decedent declared the said instrument so subscribed by him to be a codicil to his last will and testament. And I thereupon signed my name as a witness at the end of said codicil to said will, at the request of said decedent, and in his presence. The said decedent, at the time of so executing said instrument, was upwards of the age of twenty-one years, and of sound mind, memory and understanding, and not under any restraint, or in any respect incompetent to devise real estate.

I also saw said John McKenzie, Joseph A. Lutz, and John Cassidy, the other attesting witnesses, sign their names as witnesses at the end of said codicil to said will, and know that they did so at the request of said decedent, and in his presence.

RODGER McKENZIE.

Sworn this 28th day of July, 1851, before me.

A. W. BRADFORD.

In the matter of proving the last will and testament of Bernard McKenzie, deceased, as a will of real and personal estate.

Examination of witnesses sworn and examined in the above-entitled matter.

County of New York, to wit:

George P. Nelson, of the city of New York, being duly sworn as

a witness in the above-entitled matter, and examined on *on* behalf of the applicant to prove said will, says: I was acquainted with Bernard McKenzie, now deceased; I knew the above-named decedent before his death; the subscription of the name of said decedent to the instrument now shown to me, and offered for probate as his last will and testament, and bearing date the second day of July, in the year one thousand eight hundred and fifty-one, was made by the decedent, at the city of New York, in the presence of myself, John L. Chase, and Rodger McKenzie, the other subscribing witnesses; at the time of making such subscription, the said decedent declared the said instrument, so subscribed by him, to be his last will and testament; and I, thereupon, signed my name as a witness at the end of said instrument, at the request of said decedent, and in his presence: the said decedent, at the time of so executing said instrument, was upwards of the age of twenty-one years, and of sound mind, memory, and understanding, and not under any restraint, or in any respect incompetent to devise real estate.

I also saw said John L. Chase and Rodger McKenzie, the other attesting witnesses, sign their names as witnesses at the end of said will, and know that they did so at the request of said decedent and in his presence. GEORGE P. NELSON.

Sworn this 28th day of July, 1851, before me.
A. W. BRADFORD.

In the matter of proving the last will and testament of Bernard McKenzie, deceased, as a will of real and personal estate.

Examinations of witnesses sworn and examined in the above-entitled matter.

County of New York, to wit:

John Cassidy, of the city of New York, being duly sworn as a witness in the above-entitled matter, and examined in behalf of the applicant to prove said will, says: I was well acquainted with Bernard McKenzie, now deceased; I knew the above-named decedent for about eighteen months before his death; the subscription of the name of said decedent to the instrument now shown to me, and offered for probate as a codicil to his last will and testament, and bearing date the fourth day of July, in the year one thousand eight hundred and fifty-one, was made by the decedent, at the city of New York, by making his mark in the presence of myself, Rodger McKenzie, and Joseph A. Lutz, the other subscribing witnesses; at the time of making such subscription, the said decedent declared the said instrument, so subscribed by him, to be a codicil to said last will; and I, thereupon, signed my name as a witness to the end of said instrument, at the request of said decedent and in his presence. The said decedent, at the time of so executing said will, was upwards of the age of twenty-one years, and of sound mind, memory, and understanding, and not under any restraint or in any respect incompetent

to devise real estate. I also saw said John McKenzie, Rodger McKenzie, and Joseph A. Lutz, the other attesting witnesses, sign their names, as witnesses, at the end of said codicil to said will, and know that they did so at the request of said decedent and in his presence.

JOHN CASSIDY.

Sworn this 28th day of July, 1851, before me.

A. W. BRADFORD.

County of New York, *ss.*

Recorded the preceding last will and testament and codicil of Bernard McKenzie, deceased, as a will of real and personal estate, together with the proofs and examinations taken and had in the court of the surrogate of the county of New York, relating to said last will and testament, which record is hereby signed and certified by me pursuant to the provisions of the revised statutes, this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and fifty-one. A. W. BRADFORD, Surrogate.

The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or may concern, send, greeting:—

Know ye that, at the county of New York, on the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and fifty-one, the last will and testament of Bernard McKenzie, deceased, was proved and is now approved and allowed by us; and the said Bernard McKenzie, being at or immediately previous to his death an inhabitant of the county of New York, by reason whereof the proving and registering of said will, and the granting administration of all and singular the goods, chattels, and credits of the said testator, and also the auditing, allowing, and final discharging the account thereof, doth belong unto us, the administration of all and singular the goods, chattels, and credits of the said deceased, and any way concerning his will, is granted unto Jane McKenzie, of the city of New York, the sole executrix in the said will named; she being first duly sworn faithfully and honestly to discharge the duties of such executrix.

In testimony whereof, we have caused the seal of the office of the said surrogate to be hereunto annexed.

[SEAL.] Witness: A. W. BRADFORD, Esquire, Surrogate of our said county, at the city of New York, the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and fifty-one, and of our Independence the seventy-sixth. A. W. BRADFORD.

State and County of New York, Surrogate's Office, *ss:*

I, Alexander W. Bradford, Surrogate of said county, and acting as clerk of the Surrogate's Court, do hereby certify that I have compared the foregoing copy of the last will and testament of Bernard

McKenzie, deceased, and of the proof thereof, and the letters testamentary granted thereon, with the original record thereof now remaining in this office, and have found the same to be a correct transcript therefrom, and of the whole of such original record.

In testimony whereof I have hereunto set my hand and affixed my seal of office this third day of April, one thousand eight hundred and fifty-four, and of our Independence the seventy-eighth.

[SEAL.]

A. W. BRADFORD, Surrogate.

State and County of New York, Surrogate's Court, *ss:*

I, Alexander W. Bradford, Surrogate of said county and presiding magistrate of the Surrogate's Court, do hereby certify that the foregoing exemplification of the last will and testament of Bernard McKenzie, deceased, and of the proofs thereof and of the letters testamentary granted thereon is authenticated in due form.

In testimony whereof I have hereunto set my hand and affixed the seal of the Surrogate's Court this tenth day of April, in the year of our Lord one thousand eight hundred and fifty-four, and of our Independence the seventy-eighth.

[SEAL.]

A. W. BRADFORD, Surrogate.

Filed in office November 22d, 1854.

GEO. FISHER, Secretary.

(Opinion of the Board.)

ROBERT B. NELEIGH vs. THE UNITED STATES. } Number 320.

For a part of a place on the San Joaquin River, embracing eleven leagues, granted to Jose Castro, County of Mariposa.

The claimant in this case has offered in evidence in support of his claim, a traced copy of a grant on file in the archives of State for the above named land issued by Governor Pio Pico on the 4th day of April, 1846, to Jose Castro. Also a deed of conveyance from the said Castro and wife for six leagues of the land to the said claimant and one Bernard McKenzie, dated the 8th day of June, 1849, with the privilege of selecting the said six leagues from any part of the eleven leagues that they might choose.

Also a deed from J. McKenzie, wife of the said Bernard McKenzie, dated on the 8th day of April, 1852, for the half conveyed to the said McKenzie by the said Castro and wife.

All of which said averments seem to be well authenticated. It also appears by the proofs in the case that subsequent to the making of the said deed by the said Castro and wife to the said McKenzie, McKenzie departed this life leaving a will, and in and by said will appointing his said wife his sole executrix, with full and ample

power to convey the land in manner and form as the same has been done.

The claimant has also filed notes of a survey of the part selected by him and a plat of the same, and asks a confirmation corresponding thereto.

The description of the land given in the original grant is entirely too vague and uncertain to enable us to determine whether the survey and the plat presented by the petition herein, is within the boundaries of the original grant or not.

The grant describes the land as commencing on the San Joaquin River, at the foot of the Snowy Mountains, and running down stream, and refers to a plat hereafter to be furnished.

The survey presented by the petitioner and the accompanying plat exhibits lands lying on each side of the river, with the river nearly in the centre.

It is impossible for us to determine from the terms of the grant which side of the river the land is to be located, or whether on both sides, or how wide or in what shape the land is located so as to enable us to decree a confirmation to any particular piece of land.

Yet the grant being deemed a valid one, we think, under the ruling of the Supreme Court of the United States in the late case of Fremont vs. the United States, the original grantee has a vested interest in eleven leagues of land somewhere on the San Joaquin River, its measurement commencing at the base of the Snowy Mountains and running down stream. In that case, like the one now under consideration, there was no map furnished to the Governor upon which to base the grant, and in that case, like the present one, the boundaries were vague and uncertain, and also in that case, like the present one, there has been no juridical measurement and segregations under the provisions of the Mexican law, so as to give a fixed location to the land intended to be granted. Yet the court say in that case that some difficulty has been suggested as to the form of the survey.

The law directs that a survey shall be made and a plat returned of all claims confirmed by the commissioners, and as the lines of this land have not been fixed by the public authority, their proper location may be a matter of some difficulty.

Under the Mexican Government, the survey was to be made or approved by the officer of the government, and the party was not at liberty to give what form he pleased to the grant; this precaution was necessary, in order to prevent the party from giving it such a form as would be inconvenient to the adjoining public domain, and impair its value.

The right which the Mexican Government reserved, to control this survey, passed, with all other public rights, to the United States, and the survey must now be made under the authority of the United States, and in the form and divisions prescribed by law for surveys in California, embracing the entire grant in one tract. On a careful

investigation of the whole case, and with reference to the decision of the Supreme Court above referred to, we are of the opinion that Castro had, by virtue of his aforesaid grant, a vested right in eleven leagues of land somewhere on the San Joaquin River, its measurement to commence at the base of the Snowy Mountains, and running down stream, and that by virtue of the deed above referred to, that interest has passed to the present claimant, to the extent of six square leagues, to be selected by him out of the eleven, when the same shall hereafter be located by the proper officer, and a decree of confirmation to that effect will be entered.

(Confirmed.)

(Signed) GEO. FISHER, Secretary.

Recorded in Record of Decisions, vol. nine, page 647.

(Signed) GEO. FISHER, Sec'y.

(Decree of Confirmation.)

ROBERT B. NELEIGH
vs.
THE UNITED STATES. } No. 320.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid, and it is therefore decreed that his application for a confirmation thereof be allowed.

The land, of which confirmation is hereby made, consists of six square leagues, embraced in a grant issued by Governor Pio Pico, on the 4th day of April, 1846, to Jose Castro, and described in said grant as commencing at the foot of the Snowy Mountains, on the San Joaquin River, and running down said river.

To be selected by the said petitioner from the said eleven leagues named in said grant, when the same shall be located by the proper authority. Reference being had to the said grant.

M. ANG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office May 8th, 1855.

(Signed) GEO. FISHER, Sec'y.

Recorded in Records of Decisions, vol. nine, page 649.

GEO. FISHER, Secretary.

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the Southern District of California, it is hereby ordered, that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States District Court for the Southern District of California, and the other be transmitted to the attorney-general of the U. S.

Office of the Board of Commissioners to ascertain and settle private land claims in the State of California.

I, George Fisher, Secretary to the Board of Commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing fifty pages, numbered from 1 to 50, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 320 on the docket of the said board, wherein Robert B. Neleigh is the claimant against the United States for the place known by the name of Land on the San Joaquin River.

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office), at San Francisco, California, this twenty-seventh day of October, A. D. 1855, and of the Independence of the United States of America the eightieth.

[SEAL.] GEORGE FISHER, Secretary.

Office of the Attorney-General of the United States, Washington, 3d December, 1855.

(320). "Land on the San Joaquin River."

ROBERT B. NELEIGH, Claimant.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 20th day of November, 1855, the appeal in the District Court of the United States for the Southern District of California will be presented by the United States. C. CUSHING, Attorney-General.

Filed February 12th, 1856. C. E. CARR, Clerk.

In the District Court of the United States for the Southern District of California.

City and County of Los Angeles, State of California.

ROBERT B. NELEIGH, Appellee, } Docket No. 331.
ads.
THE UNITED STATES, Appellants. } Transcript No. 320.

To the Honorable J. S. K. Ogier, Judge.

The petition of Pacificus Ord, a resident of said city, county, and State, attorney of the United States for the Southern District of California, who petitions in this behalf for the United States, and being present here in court in the name and behalf of the United States, represents as follows: That heretofore, to wit, on or about the 3d day of September, A. D. 1852, Robert B. Neleigh presented a petition to the commissioners to ascertain and settle the private

land claims in the State of California, when sitting as a board, claiming a tract of land on San Joaquin River, in the county of Mariposa, State of California, which said petition is referred to for a description of the land claimed, a copy of which appears in the transcript hereafter referred to. That thereafter, to wit, on or about the 8th day of May, A. D. 1855, the said commissioner confirmed, by final decision, the said claim of said petitioner.

That thereafter, to wit, on or about the 24th day of November, A. D. 1855, a duly certified transcript of the proceedings and decision of the said commissioners in said cause, and the papers and evidence on which the said decision was founded, was filed in the office of the Clerk of the District Court of the United States for the Southern District of California, and marked No. 320, reference to which, it is prayed, may be had and made part of this petition. That on or about the 20th day of November, A. D. 1855, the honorable Caleb Cushing, Attorney-General of the United States, received a duly certified duplicate of said transcript of the proceedings and decision of said commissioners in said cause, and the papers and evidence on which said decision was founded. That thereafter, to wit, on or about the 12th day of February, A. D. 1856, the said attorney-general of the United States filed or caused to be filed in behalf of the United States a notice with the clerk of the said District Court of the United States, that the appeal in said cause from the said decision of the said commissioners in the District Court of the United States for the Southern District of California, would be prosecuted by the United States.

Your petitioner further represents, that the land claimed as aforesaid, is situated in the Southern District of California and within the jurisdiction of this honorable court. Your petitioner further represents and insists, that the said claim is invalid, and the said decision of said commissioners is erroneous, and ought to be reviewed, reversed, and set aside for many errors and imperfections of law and evidence apparent in said certified transcript of the proceeding and decisions of said commissioners in said cause filed and appealed from as aforesaid; and your petitioner denies all and singular each and every allegation in the said petition of said claimant presented as aforesaid to said commissioners.

And your petitioner further denies that the said claimant has any valid right or title to said land claimed as aforesaid, or any part thereof.

And no sufficient proof having been made of the allegations in said petition to said commissioners, or in support of the said claim, no decision confirming the same should have been made by said commissioners; but the said claim should have been rejected by them. And the said claimant having no valid right or title derived from the Spanish or Mexican governments to the land claimed, as aforesaid, the lawful right and title in and to the said land was acquired by, and it now belongs to, the United States, by virtue of conquest and

the treaty of peace, friendship, and limits and settlement between the United States and the Republic of Mexico, made at the city of Guadalupe Hidalgo, February 2d, A. D. 1848.

Wherefore the said Pacificus Ord, Attorney of the United States for the Southern District of California, for and in behalf of the United States by reason of the premises, and in pursuance of the act of Congress entitled "An Act to ascertain and settle the private land claims in the State of California, approved March 3d, A. D. 1851," and the laws and statutes in such case made and provided, prays that the said claimant or his attorney may be served with a copy of this petition; and that this honorable court will review the said decision of the said commissioners, and reverse the same, and decide on the validity of the said claim, and decree the alleged title to be invalid, with costs and general relief. P. ORD, Attorney of the United States for the Southern District of California.

Filed this 5th January, 1857. C. SIMS, Clerk.
Per J. H. COLEMAN, Dep.

United States District Court for the Southern District of California.

THE UNITED STATES, Appellants,
vs.
ROBERT B. NELEIGH, Appellee. } Docket No. 331.

Transcript No. 320.

Now comes the appellee and respondent in this cause, and for answer to the petition of the appellant filed herein, say it is true that the lands described in said petition and in said transcript filed in this cause, lies within the Southern District of California, and within the jurisdiction of this court. But this respondent denies that his said title is invalid, and avers that the same is a good and valid title and ought to be confirmed, and prays that the decision of said board of commissioners may be affirmed, and his said title decreed a good and valid title. E. O. CROSBY, Atty.,
Counsel for Appellee and Respondent.

Filed this 27th January, 1857.
C. SIMS, Cl'k.
Per J. H. COLEMAN, Deputy.

United States of America, Southern District of California, *ss:*

The President of the United States to Robert B. Neleigh, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against you, and each of you, in the District Court of the United States in and for the Southern District of California, on the 5th day of January, in the year of our Lord one thousand eight hundred and fifty-seven, at the city and county of Los Angeles, in said district, by P. Ord, U. S. Attorney, praying said court to review the decision of the U. S. Land Commissioners

of the 8th day of May, 1855, confirming your claim to the land called the Land on "San Joaquin," and you, and each of you, are required to appear at said court in said city within ten days after the service hereof, if served on you within the county of Los Angeles, and within twenty days if served on you in the county of San Diego or San Bernardino, and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or that judgment by default will be taken against you and each of you, and the prayer of the said petitioner will be granted, with costs.

In witness whereof I have hereunto set my hand and affixed the seal of the said court this 27th day of January, in the year [SEAL.] of our Lord one thousand eight hundred and fifty-seven, at Los Angeles aforesaid. C. SIMS, Clerk.

Per J. H. COLEMAN, Deputy.

Filed on return this 27th January, 1857.

C. SIMS, Clerk.

Per J. H. COLEMAN, Deputy.

I served this summons, along with the proper copy of the petition, upon E. L. Crosby, attorney for appellee, by delivering to him a true copy of same at Los Angeles, in the Southern District of California, on the 27th day of January, A. D. 1857.

EDWARD HUNTER, U. S. Marshal.

Per M. L. GOODMAN, Deputy.

Sworn to and subscribed before me this 27th January, 1857.

C. SIMS, Clerk.

Per J. H. COLEMAN, Deputy.

United States District Court for Southern District of California:

THE UNITED STATES, Appellants, vs. ROBERT B. NELEIGH, Appellee. } Docket No. 331.

Transt. No. 320.

It is hereby stipulated that this cause be now submitted upon the proofs in the case, upon condition that the final decree shall not be entered until the 2d Monday of December next, and further, that if on or before that time the appellants shall discover evidence, then this cause, upon motion, may be reopened.

E. O. CROSBY,

Attorney and Counsel for Appellee.

P. ORD, Dist. Atty.

Filed January 27th, 1857.

C. SIMS, Clerk.

San Francisco, April 2d, 1858.

Semmes, Esq., Clerk of the United States Court for the Southern District of California.

Sir—Take notice that I have employed Messrs. Volney E. Howard and Frederick A. Sawyer to represent me and my interest in the United States Court for the Southern District of California, in the case No. 331, on the docket of said court, of Robert B. Neleigh vs. the United States.

Your ob't s't, JAMES F. STUART.

Filed this 6th April, 1855. C. SIMS, Cl'k.
Pr. J. H. COLEMAN, Dep.

(No. 331.)

In the U. S. District Court for the Southern District of California.

ROBERT B. NEYLLY, Respondent,
vs.
THE UNITED STATES, Appellants.

It is hereby agreed and stipulated, by the attorneys of the respective parties herein, that the testimony of Pio Pico shall be taken, to be used in this action in this court, as a part of the proof therein, subject to all legal exceptions, except as to the manner of taking the same. The annexed deposition of Pio Pico is the proof referred to in this stipulation.

P. ORD, U. S. Dist. Att'y, by E. J. C. KEWEN, Acting Att'y. FRED'K SAWYER, Attorney for Claimants. Filed April 8th, 1858. C. SIMS, Cl'k, per J. H. COLEMAN, Dep.

ROBERT NELEGH, Appellee,
ads.
THE UNITED STATES, Appellants. } Case No. 331.

Deposition of Pio Pico, taken before C. Sims, United States Commissioner for the District of California, at the United States courthouse in the city of Los Angeles, on Thursday, the 8th day of April, A. D. 1858, at 9 o'clock A. M. of said day, on behalf of the claimant, by the stipulation of parties, to be used as testimony in a certain case now pending in the U. S. District Court, being case No. 331 on the docket of said court, wherein the United States are appellants and Robert Neleigh is appellee. Present, E. J. C. Kewin, acting U. S. attorney, on behalf of the appellants, and F. A. Sawyer, in behalf of appellees.

Pio Pico being duly sworn.

Quest. What is your name, age, and place of residence?

Ans. My name is Pio Pico; I am 57 years of age, and reside in the county of Los Angeles, State of California.

Quest. Have you ever occupied an official station in California, and if so, what, and in what years?

Ans. I have occupied the station of constitutional Governor in the years of 1845 and 1846; up to August of the latter year.

Quest. In what manner did you become governor, and were you ever recognized as such by the supreme government of Mexico; and if yes, by virtue of what proceeding or document, and of what date?

Ans. I became governor in accordance with the laws. I was one of the trio submitted by the legislative body of California to the supreme Mexican government, from which I received my appointment, and entered upon the discharge of my duties as constitutional governor, by virtue of a communication from the secretary of state of the Mexican government.

Quest. At what time did Governor Michelterreno abandon the office of governor, and what office, if any, did you occupy at that time; and how long after was it that you was named one of the trio, and received your appointment as governor from the supreme gov't?

Answer. It was in the beginning of the year 1845; it might have been about February; I was at that time first Vocal of the Departmental Assembly. I was named as one of the trio by the assembly, during the same year 1845, but I do not remember the month exactly; if I do not mistake, it was in the month of May, 1845, that I received my appointment as governor from Mexico.

Question. Was the first vocal ex-officio governor, and did you act as such before receiving your appointment from the supreme government?

Answer. He was, and I acted as such governor until my appointment came from Mexico.

Question. Did you know José Castro, the present Governor of Lower California; if yea, how long have you known him, and where have you known him; and has he occupied any public capacities in California, and in what years?

Answer. Yes, I know him since the year 1828. I have known him in Monterey; he has occupied offices under the government in Upper California; he has been a deputy of the legislative bodies, and has been the military general commanding the department. He was discharging the duties of general commander during the time I was governor, and had filled the same position previously, when Juan B. Alvarado was governor. When I first knew him in 1828, he was a deputy in the legislative body, from which time until August, 1846, he was in the discharge of the duties of some office under the Mexican government.

Question. What was the salary allowed by law to the commandante general?

Answer. I do not know.

Question. Do you know anything of a tract of land on the banks of the San Joaquin River, comprising about eleven leagues, commencing from the edge of the Sierra Nevada, and running down stream?

Answer. I am unacquainted with that section of country, and have no recollection of that particular tract.

Question. Do you remember making a grant to José Castro of a tract of land in that vicinity?

Answer. I do not recollect, as during my administration large numbers of grants were made, and, unless there was some especial circumstance connected with some particular grant, I cannot at this remote period bring to my mind any of the grants which were made by me.

Question. Did you ever make a grant without a petition for the land being first presented to you?

Answer. I believe that I did not.

Question. Was there a book of records kept in the year 1846, in which the grants of land made by you were recorded?

Answer. There was.

Question. Do you know where that book is? If not, where was it when you last saw it?

Answer. I do not know. The last time I saw it was in the office of the Secretary of the Departmental Government.

Question. Were the petitions for land and other public papers kept in the same office?

Answer. They were.

Question. What became of the books, papers, and documents of that office?

Answer. Under my direction and supervision they were packed in boxes, a portion of which said boxes were removed from the office to a designated place; the remainder of the boxes, from the want of time and convenience, were left remaining in the executive buildings. On my return to the country, in 1848, I learned and was informed, and it was a matter of public notoriety, that not only the documents before referred to, but many of those of the municipal government of Los Angeles had been scattered about, lost, and destroyed—that they had been even used as paper for the making of gun cartridges; from the destruction of which documents I myself have suffered heavy pecuniary loss, as documents in which I, as a citizen of California, was deeply interested pecuniarily, and which were in the office, have never been recovered.

Question. When were you last in the city of San Francisco? and do you intend to return there? and when?

Answer. I was last there in 1854, and I have no intentions at present of revisiting again San Francisco.

PIO PICO.

Sworn to and subscribed before me this 8th day of April, A. D. 1858. C. SIMS, U. S. Com'r.

I, C. Sims, of the city and county of Los Angeles and State of California, commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions under the acts of Congress, approved September 24th, A. D. 1789,

February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of Clerk of the United States Court of the Southern District of California, and by special appointment by the United States Circuit Court for the State and Circuit of California, do hereby certify that the foregoing depositions of Pio Pico was taken before me on the 8th day of April, A. D. 1858, according to the stipulation of the said parties, at the United States District court-house, in the city of Los Angeles and State of California, in behalf of the claimant; that said Pio Pico was by me duly sworn according to law, as a witness in said cause in the caption of this deposition mentioned, and, after being so sworn, his testimony was by me reduced to writing in his presence, and after having been by me carefully read to him and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof, I have hereunto set my hand and private seal (having no seal of office), this 8th day of April, A. D. 1858.

[SEAL.] COLUMBUS SIMS, United States Commissioner for Southern District California.

Filed this 8th April, 1858. C. SIMS, Clerk.
Per J. H. COLEMAN, Dep.

San Francisco, April 2d, 1858.

P. Ord, Esq., United States District Attorney for the Southern District of California.

Sir: I have employed Messrs. Volney E. Howard and Frederick A. Sawyer to represent me and my interest in the United States District Court for the Southern District of California, in the case No. 331, Robert B. Neleigh *vs.* the United States.

Your ob't s't, JAMES F. STUART.

Filed May 2d, 1858. C. SIMS, Clerk.
Per J. H. COLEMAN, Dep.

United States District Court for the Southern District of California.

ROBERT B. NELEIGH vs. THE UNITED STATES. } No. 331.

Personally appeared James F. Stuart, one of the parties in interest in the above-entitled cause, and makes oath and says that, since this case was submitted to the consideration of the court, the Supreme Court of the United States, as this affiant is advised and believes, has announced principles in the case of Henry Combusteon at variance with the doctrines of that court previously promulgated, as applicable to the grants of land by the Mexican government in the department of the Californias, especially with reference to the registration and recording of said grants, which are calculated to affect the rights of the claimants in this case under the proof now in the record. Affiant believes he will be able to supply the proof as to the issuance and registration of said grant by the deposition of Pio

Pico, Jose Matias Moreno, and others; and also by the same witnesses, proof of the existence of the expediente, also the notoriety and genuineness of the grant, and asks that the case may be remanded to the docket for that purpose. JAMES F. STUART.

Sworn and subscribed April 2d, 1858, before me.

W. H. CHEVERS,
U. S. Commissioner for the District of California.

Filed this 14th June, 1858. C. SIMS, Cl'k.
Per J. H. COLEMAN, Dep.

(Document marked G.)

El ciudadano Pio Pico, primer vocal de la Ex'mo Asemblea Departmental de Californias, y Gob'or interim del departmento a los habitantes del mismo. Sabed 2ne la Ex'mo Assemblea Departmental en sesion de hay ha acordado y decretado lo seguiente.

Siendo el primero vocal de la Ex'mo Asemblea la persona a que llama la ley para encargarse de las riendas del Gobierno de este Departmento cuyo destino se halla vacante par esta descanocido este autoridad en la del S'or G'ral Don Manuel Micheltorrena, en que residia y resultando serlo el S'or D'n Pio Pico, se encargara este Señor y desde esta mismo fecha del Gobierno Departmental interinamente conforme el articulo 138 de las cases organicas de la nacion y procedera a dictar las medidas convenientes a la seguridad conservacion del orden publico y tranquilidad segun las facultades que las leyes le cansiden circulandose este decreto a todas las Pueblas del Departmento para la inteligencia y reconociemento.

Dado en la Ciudad de los Angeles, capital del Departmento de Californias, a 15 de Febrero de 1845.

Y para que llegue a noticia de todas lo comunico a V. a fin de que haciendolo publicar con las solemnidades de land o en ese Pueblo y su comprencion se fige en los purges de costumbre acusando me el correspondiente recibo.

Dios y Libertad. Ciudad de Los Angeles, Febrero 15 de 1845.

Office of the Surveyor-General of the United States for California.

I, J. W. Mandeville, Surveyor-General of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory, or department of the Upper Californias, do hereby certify the foregoing to be a full, true and correct copy of a document from vol. 6, Departmental State Papers, page 35, as the same appears among and are a part of said archives.

In testimony whereof, I have hereunto set my hand, and affixed my official seal, at the city of San Francisco, this 1st day of June, A. D. 1858.

[SEAL.] J. W. MANDEVILLE,
U. S. Surv. Gen'l, Cal.

Filed this 15th June, 1858. C. SIMS, Cl'k.
Per J. H. COLEMAN, Dep.

(Document marked H.)

La Ex'mo Asemblea Departmental en acuerdo de hay y en uso de la faculdad 17° que le concede el articulo 134, de las Bases Organicas de la Nacion ha tenido a bien proponer al supremo Gobierno para Gobernador del departmento los Señores Siguientes.

Primero, Ex'mo Señor D'n Pio Pico.

Segundo, Señor Don Juan Bandini.

Tercero, Señor D'n Mariano G. Vallego.

Cuarto, Señor D'n Jose de la Guerra y Noriega.

Quinto, Señor D'n Antonio M'a Osio.

Lo tendra entendido el Ex'mo Señor Gobernador del Departmento para su publicacion y de mas fines Sala de Sesiones de la Honorable Asemblea de Californias, Junio 27 de 1845.

PIO PICO, Presidente.
AUGUSTIN OLVERA, Scrivo.

Y para que llega a noticia de todas y tenga ser cumplimento en nudose publique por bando en los pueblos del Departmento y se circule a quienes corresponda.

Angeles, a 27 de Junio de 1845.

JOSE M'A COVARUBIAS, Srv.

"Endorsed:" Propuesto p'a Gobernador.

Office of the Surveyor-General of the United States for California.

I, J. W. Mandeville, Surveyor-General of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory, or department of the Upper Californias, do hereby certify the foregoing page numbered one (1), to be a true, full and correct copy of a document from Vol. IV. of Legislative Records, page 401, as the same appears among, and forms a part of said archives.

In testimony whereof, I have hereunto signed my name officially, and affixed my official seal, at the city of San Francisco, this 1st day of June, 1858.

[SEAL.] J. W. MANDEVILLE,
U. S. Sur. Gen'l, Cal.

Filed this 15th June, 1858. C. SIMS, Cl'k.
Per J. H. COLEMAN, Dep.

City and County of San Francisco, State of California.

James F. Stuart, a resident of the county of Sonoma, in the State of California, being sworn, deposes and says that he is the owner by good and sufficient deeds of conveyance, duly recorded in the counties of Mariposa and Fresno, of one-third part of the lands on the San Joaquin, claimed by Robert B. Neleigh in the suit now pending in the United States Court of the Southern District of California,

between the said Neleigh and the United States, which is numbered 331 on the docket of said court. JAMES F. STUART.

Subscribed and sworn to before me this second day of April, A. D. 1858. F. J. THIBAUK, Notary Public.

Filed this 15th June, 1858.

C. SIMS, Clerk.
Per J. H. COLEMAN, Deputy.

(Document marked K.)

Ministerio de Justicia Instruction Publica, No. 28.—683.

E. S.

Ha llegado á noticia del E. S. Presedt. que el Gobierno de ese Departmento ha dispuesto sacar a publico subastor todo las biens perteneciente a las Misiones del mismo que el antecesor de V. E. habia mandado devolver a los respectivos Misiones para el manigo y admono. de su temporalidades ese consequencia se ha servido prevemiend que ese Gobierno se sirva informar sobre estos particulares suspendiendo desde luego todo procedm'to en cuanto a enagenacion de los biens de que se trata hasta la resolucion del Sp'mo Gobierno.

Tengo el honor de decirle á V. E. con los fines indicados, protestandole mi consideracion y apices.

Dios y Libertad. Mexico, Noviembre 14 de 1845.

MONTESDEOCA.

S. Gobernador del Depto. de California. Puerto de Monterey.

Office of the Surveyor-General of the United States for California.

I, J. W. Mandeville, Surveyor-General of the United States for the State of California, and as such having in my office and in my charge and custody, a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle private land claims in California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed page of tracing paper, numbered one, exhibits a true, full and correct copy of an original document, dated November 14th, 1845, on page 683 of vol. 2 of the State papers, "Missions and Colonization," as the same appear among and is a part of said archives.

In testimony whereof I have hereunto signed my name officially and caused my seal of office to be affixed at the city of San Francisco, this 1st day of June, A. D. 1858. J. W. MANDEVILLE,

[SEAL.]

U. S. Surveyor-General for California.

Filed this 15th June, 1858.

C. SIMS, Clerk.
Per J. H. COLEMAN, Deputy.

State Department of the Territory of California,
Monterey, July 21st, 1848.

Sir—Your letter and accompanying papers announcing the return of Don Pio Pico have been received. You will require Don Pio to immediately report himself to you and to give his written parole of honor that he will take no part whatever in the existing war between the United States and Mexico, either by bearing arms himself or by inducing others to do so, or by giving the Mexicans any aid or assistance of whatever character. Should he refuse to give such parole he will be held as a prisoner of war. He must, of course, be treated with all the respect due to his rank and character, but at the same time a strict watch must be kept upon his conduct.

By order of the Governor.

H. W. HALLECK,
Lieut. of Eng. and Sec'y of State.

Col. J. D. STEVENSON,
Comd'g, &c., Los Angeles.

(Exhibit No. 1.)

C.	Chard Guella. Sacram'to	36/418
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	Castaneda Juan Cotale	432
	Chavey Anto. Pleyto	457
	Carrillo de Fitch Ma. Josefa y Guadalupe Estoalillo } Valle de los Palmos	471
	Anastacio Cienequita	475
	Castilan Franco. Tar. Valle de San Rafael	492
	Canedo Jose Ma. San Juan Capo.	517
	Coronel Ygno. Canada de los Verdugos	528
	Colegio de N. T. de Guadelupe } Aumento de terreno Sta. Yves	540
S.	Samuel (Tudio) Suerte de tieno	427
	Scott Jas. y John Wilson Canada de los Osis	470
	Pochae Yslas	474
	del chorro	
	Sais Maximo Sta Gertrudes	482
	Serrafina de Jesus Estanciende terreno	486
	Smith Estevan dos Solares Yerba ba.	487
	Stearns Abel Vallecitos	502
	Sainsevain Pedro Terreno po Molino Sta Cruz	508
	Serafin de Jesus S. Gabl.	527
	Sanchez Vicente Cienega y paso de la Tigra	532
	Kayser Sebastino Llano Seco	472
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D.	Dominguez José Prietos y Nagalagigua	469
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	Davila Guslir Corral de Cuato	479
	Dominguez Caslas Barrigas y Yorba Mision Viega de S. Miguel B. C.	498
	Gutierrez Oclariano La Laguna	478
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A.	Alanis Macino S. Jose Buenos Ayres	519
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	Blanco Migl. Muscupiovis	525
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	Berregesa Jose y Ygno. Chimeles	549
	Bona Tomas Valle de la Trinedad	556
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M.	Maurigues Julian Angels	515
	Maube Amo 2000 S. Gabl.	537
	Malo Ramon Sta. Rita	542
	Moraga Vicente y Luis Arenas Pauba	545
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	Sepulveda Vicente y B. Yorba Sierra de Stochia	543
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In the United States District Court for the Northern District of California.

JAMES G. MOREHEAD, Adm'r,
vs.
UNITED STATES.

H. W. Hallick being duly sworn, says, that in the year 1847 he was acting as Secretary of State under the Military Governor of California, and that in the same year, W. E. P. Hartnell was assisting affiant in the duties of his said office, so far as related to the custody and charge of the archives then in said office, and was also acting as official translator to the Governor; that in the early part of the said year 1847 the said Hartnell commenced to arrange the Expedientes, papers and documents, now in the Surveyor-General's office, composing the present "archives," and at the same time the said Hartnell commenced to index the different Expedientes and continued the same so long as affiant remained at Monterey in that year: that about the month of October, 1847, affiant left California and was absent until about the month of June, 1848; at that said Hartnell

had completed the said index in the form in which it now appears, except as hereinafter stated. From the index thus prepared, and also from an examination of the Expedientes on file, the index heretofore spoken of in the deposition of affiant now on file in this case, was prepared: in the preparation of this last index, some fiew expedientes were discovered, which had been overlooked by Mr. Hartnell, and a note of the same was then inserted by him, in the first index made by said Hartnell, an extract of which is hereto attached.

Affiant knows that said index last above named was commenced in the early part of the year 1847, and, with the above exceptions, was completed before the month of June, 1848.

Affiant has examined the said index now in the Surveyor-General's office, and knows the same to be in the handwriting of the said Hartnell, and particularly the entry in the same of Epediente No. 550, for the rancho "Carmel."

Affiant further says that, while in charge of the said "archives," they were always kept locked up, except when the said Hartnell or himself was present; and no one in their absence had or could have access to the same.

Affiant further says that, by direction of Gov. Mason, he wrote the letter dated July 21st, 1848, found on page 572 of California Message, and Correspondence, 1850, being House document No. —, and that the same was written immediately upon receipt at Monterey of the news of Gov. Pico's return to California.

Affiant says that neither at the time of his taking possession of the archives, nor at any time since, has he ever discovered any record book or index of grants made in the year 1846; nor has he ever heard of the discovery of such book or index, save and except those made by affiant and the said Hartnell.

It is hereby stipulated and agreed that the foregoing affidavit of H. W. Halleck shall be received in evidence with like force and effect as if taken upon notice by deposition, and that the paper purporting to be a traced copy of a page of the index referred to by said Halleck is a true copy thereof, and that the paper marked "Exhibit No. 1" is a copy of the letter referred by said Halleck.

April 3, 1858. THOMAS SUNDERLAND, for Claimant.
P. DELLA TORRE, U. S. Att'y.
GLASSEL & LEIGH, of Counsel for the U. S.

Endorsed: Filed May 5th, 1858.

W. H. CHEVERS, Clerk.

I, W. H. Chevers, Clerk of the District Court of the United States for the Northern District of California, do hereby certify the foregoing to be a full, true, and correct copy of the original now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court this 10th day of May, A. D. 1858.

[SEAL.] W. H. CHEVERS, Clerk.

Filed this 15th June, 1858. C. SIMS, Clerk.
Per J. H. COLEMAN, Dep'y.

In the United States District Court for the Northern District of California.

JAMES G. MOREHEAD, Adm'r,
vs.
UNITED STATES.

(Deposition of A. H. Gillespie.)

The deposition of A. H. Gillespie, taken on the 27th day of April, A. D. 1858, at the city of Sacramento, by consent of parties to be used on the trial of the above-entitled cause on the part of the appellant.

A. H. Gillespie, being first duly sworn, deposes as follows, to wit:

I am the same person whose deposition was taken in this case on the part of the United States. After William Knight had enlisted, as stated in my former deposition, he remained on duty in the Sacramento Valley until late in the fall of the year 1846; and then went south with Col. Fremont as guide, and arrived at Los Angeles on or about the 16th day of January, 1847. This was the first time Knight went south after the commencement of hostilities in 1846. After remaining at Los Angeles about a month, Knight was sent North as bearer of dispatches, and did not again go South, to my knowledge.

On his first trip South, after the beginning of the war in 1846, Col. Fremont reached Los Angeles in the month of August of that year, and at once seized the archives, as I learned on my arrival there, which was on the last day of that month. The archives were then placed in my possession, and I retained them until the 8th of September, when Col. Fremont carried them North, and, as I understood, to Sutter's Fort.

Pio Pico left the country in the month of September, 1846, and did not return while I remained; I left in July, 1847.

ARCHIE H. GILLESPIE.

Subscribed and sworn to before me this 27th day of April, A. D. 1858. [SEAL.] WM. G. ENGLISH, Notary Public.

It is hereby agreed that the above deposition may be introduced and read in evidence, subject to the same objections and exceptions as if taken on due notice before a commissioner.

THOS. SUNDERLAND, for Appellant.
P. DE LA TORRE, U. S. Attorney.
GLASSEL & LEIGH, of counsel for the U. S.

Endorsed: Filed May 5th, 1858. W. H. CHEVERS, Clerk.

I, W. H. Chevers, clerk of the District Court of the United States for the Northern District of California, do hereby certify the foregoing to be a full, true and correct copy of the original, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 10th day of May, A. D. 1858.

[SEAL.] W. H. CHEVERS, Clerk.

Filed this 15th June, 1858. C. SIMS, Cl'k.
Per J. H. COLEMAN, Dep.

United States District Court, Northern District of California.

San Francisco, May 7th, 1858.

THE UNITED STATES
ads.
JAS. G. MOREHEAD, Adm'r.

(Deposition of J. C. Fremont.)

On this day, before the District Court (by consent) of the United States for the Northern District of California, duly authorized to administer oaths, &c. &c., came John C. Fremont, a witness produced on behalf of the claimants in case No. 106, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 89 on the docket of the said Board of Commissioners, and was duly sworn, and testified as follows:—

Present, the District Attorney and Mr. Glassell for the U. S., and Mr. V. E. Howard for claimants.

Question by claimant's counsel.

Please to state all you know in relation to the custody of the records and documents belonging to the former government touching land titles in California.

Ans. About Aug. 14, 1846, I received an order from Com. Stockton, then at Los Angeles, directing me to take charge of the public archives, which were then in possession of Don Luis Vignes, an old resident of Los Angeles, in whose charge they had been placed, as I understood, by Pio Pico. I took possession of them accordingly, and retained them in my possession until about the end of September, when I placed them at what was then called Sutter's Fort on the American River. They made together about two mule loads, and I transported them in that way from Los Angeles to Sutter's Fort.

Some time in March, 1847, being myself at Los Angeles, I received an order from Gen. Kearney, dated about March 17th, directing me to deliver up all the archives and public papers belonging to the former government. Under this order they were delivered up, and consigned directly, I think, to the care of Mr. Willard P. Hall, at Monterey. They were kept in Mr. Larkin's house, where I saw them about the 13th May, 1847. I had been, up to the time I re-

ceived the order of Gen. Kearney, military commandant and governor of California. Mr. Hall was with Gen. Kearney; I don't know in what capacity.

Mr. Thomas O. Larkin had been acting as U. S. consul.

I understood that the archives had been kept in trunks by Mr. Vignes. The Californians had just evacuated Los Angeles when we entered on the 13th August. The archives were in reasonably good condition. I formed them in bales, convenient for packing. They were under my immediate charge until about the end of September, and up to that time no one but myself had access to them; I myself frequently examined them. I think I examined, more or less, every title in the archives. At the end of September they passed into the charge of G. W. Kern, then commanding at Sutter's Fort.

About the time we took possession of Los Angeles, Pio Pico went to Sonora, where he remained, I think, until hostilities ceased.

Cross-examined.

I was aware of the value of these archives, and took precautions to have them protected. They were packed in bales, and covered with blankets, so as to be secure from loss. A part of them were subsequently lost. I carried home some of them to be inspected at Washington. One I know I left there. The others were lost, with other effects, in the mountains of San Juan.

One of these titles referred to a grant to Gen. Castro. It was, I think, a title; whether the full title, or the papers concerning a grant, I am unable to say. This was lost in the mountains. There were three or four lost in the mountains. The one left at Washington referred to the MacNamara grant.

The archives I allude to were only those found at Los Angeles. I know nothing of any at Monterey, or at any other point than Los Angeles. When I last saw them they were at Mr. Larkin's private residence, or in a room adjoining a store, above which he resided. It was not used as a hospital.

The feeling of the Mexican authorities toward Americans and American settlers, in March, April and May, 1846, was hostile.

About May 1, 1846, I was about the Buttes, in Sacramento Valley. The rising of the American settlers, in the latter part of that month, was caused directly by a disposition, on the part of the Mexican authorities, to expel them. I knew Wm. Knight very well; I first saw him, I think, in the spring of 1846; I had heard of him as one of the settlers, and a former resident of New Mexico. He was a prominent actor in this rising, but not ostensibly so. He acted as a spy for me during the whole campaign. He became a spy for me in May. His occupation led him to the neighborhood of the bay, where he could communicate with the Mexicans, and ascertain their movements.

The communication between the Sacramento Valley and Los An-

geles was open by the coast route, but more or less obstructed by Indians on the Tulare route. The season was very hot; the waters were rather low; I found no difficulty in fording any stream, except the Sacramento; I only speak of the Sacramento waters; I suppose communication would be difficult for American settlers; I don't know whether Knight was in Los Angeles in May, 1846.

He spoke to me of his title frequently, and, generally, with the object of having me examine them. He brought them to me at Monterey, and returned to the Stanislas. This was just before his death. He described them, but I do not recollect what the description of them was. I do not recollect of his saying anything of Micheltorrena in connexion with the papers; I think he spoke rather of Pico. He and I were on friendly terms. I had great regard for him. I don't recollect that he stated his papers were imperfect when he brought his papers to me in 1849; he could not have supposed I had any authority to complete his papers. The Convention was then sitting.

J. C. FREMONT.

Taken and subscribed before me this 7th May, 1858.

OGDEN HOFFMAN.

Endorsed: Filed May 7th, 1858. W. H. CHEVERS, Clerk.

I, W. H. Chevers, Clerk of the District Court of the United States for the Northern District of California, do hereby certify the foregoing to be a full, true, and correct copy of the original now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 10th day of May, A. D. 1858.

[SEAL.] W. H. CHEVERS, Clerk.

Filed this 15th June, 1858. C. SIMS, Clerk.
Per J. H. COLEMAN, Dep.

United States District Court for the Southern District of California.

ROBERT NELEIGH
vs.
THE UNITED STATES. } No. 331.

It is hereby stipulated and agreed that certified copies of the depositions of John Charles Fremont, taken on the 7th day of May, 1858, in the case of James G. Morehead, administrator, *vs.* The United States, now pending in the District Court of the United States for the Northern District of California, and numbered on the docket of said court as Number 106; and the deposition of A. H. Gillespie, taken in the same case on the 27th day of April, 1858, and the affidavit of J. W. Halleck, and exhibits annexed thereto, filed in the said case No. 106, on the 5th day of May, 1858, shall be received as evidence in the case of Robert B. Neleigh *vs.* The United States, No.

331, now pending in District Court of the United States for the Southern District of California, subject to all legal objections, except as to the form of taking them.

FRED'K A. SAWYER, for Claimant.

May 13th, 1858. P. ORD, U. S. Att'y.

Filed this 15th June, 1858. C. CIMS, Clerk.
Per J. H. COLEMAN, Dep.

United States District Court for the Southern District of California.

UNITED STATES
vs.
ROBERT B. NELEIGH. } No. 331.

State of California, County of San Francisco, *ss.*

Deposition of Jonathan D. Stevenson and Richard Somerset Den, witnesses, produced, sworn, and examined on the part of the claimant or defendant in the above-entitled action, the 22d day of May, A. D. 1858, before me, the undersigned, C. J. Brenham, a notary public in and for said city and county of San Francisco, duly commissioned and sworn, at the office of the United States Surveyor-General, in Montgomery Block, in said city, taken by consent of the respective parties, plaintiff and defendant, and in the presence of their respective counsel, P. Ord, Esq., United States District Attorney for the Southern District of California, appearing for plaintiff, and F. A. Sawyer, Esq., for defendant or claimant.

The witnesses having been by me, the said notary, duly sworn that the evidence they should give in the said action should be the truth, the whole truth, and nothing but the truth, duly testified as follows:

My name is Jonathan D. Stevenson; I am about fifty-nine years of age, and reside in the city of San Francisco; I am an attorney-at-law.

Question. Are you acquainted with Don Pio Pico of Los Angeles? and if yea, how, when, and where did you become acquainted with him?

Answer. I am; I became acquainted with him at Los Angeles, California, in the spring of 1848; the acquaintance continued up to the day I left Los Angeles, which was about the 26th September, 1848. Don Pio Pico, upon his return to California, was ordered by me, as the military commandant of the Southern District of California, to report himself to me as having arrived in the country. He did so report himself, and I permitted him to go where he pleased, upon his parole of honor. I was subsequently directed by Col. Mason to arrest him, and confine him in the common guard-house of the post. I arrested him, but gave him my own quarters, and became myself responsible for him. He took his meals daily at my table, and at night occupied my chamber. We were constantly together during his arrest.

Question. At the period mentioned in your last answer, did you occupy any position under the United States Government? and if yea, what was it?

Answer. I was a colonel in the United States service, commanding the First Regiment of New York volunteers then on duty in California, and was then commanding the Southern military district of California, with my headquarters at Los Angeles.

Question. Are you acquainted with the signature of Don Pio Pico? and if yea, state how you became acquainted with it.

Answer. I am acquainted with his signature. Before I became personally acquainted with him a large number of Mexican documents bearing his signature and official seal, as governor of California, passed through my hands. After I became personally acquainted with him, and while he resided in my quarters at Los Angeles, I saw him write daily at the same table I used; I saw him sign his name, and saw it after it was signed.

Question. Is the signature of Pio Pico attached to the document now presented to you, bearing date the 4th of April, 1846 (a certified traced copy of which document, marked with the initial of witness hereto annexed), genuine or not?

Answer. I believe it to be the genuine signature of Pio Pico, late Mexican governor of California. J. D. STEVENSON.

My name is Richard Somerset Den; my residence is the county of Santa Barbara; my age is between thirty and forty years.

Question. Are you acquainted with the signature of Don Pio Pico of Los Angeles, late governor of California?

Answer. I am acquainted with him since 1843; I have seen him write, and know his signature.

Question. Is the signature attached to the document now presented to you, bearing date the 4th April, 1846 (a certified traced copy of which document marked with the initials of witness hereto annexed), genuine or not?

Answer. To the best of my knowledge and belief it is genuine; I believe it to be genuine.

Question. Are you acquainted with the signature of Jose Matias Moreno, attached to the same document?

Answer. I am; I have seen him write and sign his name.

Question. Is the said signature of Jose Matias Moreno before mentioned, genuine or not?

Answer. I believe it to be genuine. R. SOMERSET DEN.

I further certify that the foregoing depositions were taken and reduced to writing by me on the said 22d day of May, 1858, and when completed were carefully read by me to the said witnesses, who did not desire to make any corrections, but pronounced the same to be correct, and thereupon subscribed their names in my presence.

In witness whereof, I have hereunto set my hand and affixed my official seal this 22d day of May, A. D. 1858.

[SEAL.] C. J. BRENHAM, Notary Public.

It is hereby agreed that the above depositions of J. D. Stevenson and Richard Somerset Den may be introduced and read in evidence, subject to the same objections and exceptions as if taken on due notice before a commissioner.

FRED'K A. SAWYER, for Claimant.
P. ORD, U. S. Attorney.

Filed this 15th June, 1858. C. SIMS, Clerk.
Per J. H. COLEMAN, Dep.

Pio Pico, Gobernador Constitucional del Departam'to de Californias.

[SEAL.] Por cuanto el Teniente Coron'l de Cab'a D. Jose Castro, Ciudad'no Mexicano, ha solicitado para su beneficio personal y el de su familia un terreno p'a criadero de ganados en las margines del rio de S. Joaquin compuesto de once sitios q' comenzaran a medirse, desde la orilla de la *de la* Sierra Nevada, rio abajo, practicadas previamente las averiguaciones q. han sido necesarias, ha venido por decreto de este dia en conceder al espresado Señor los once sitias q. pretende, declarandole la propiedad de ellos por las presentes letras, de conformidad con la ley de 18 de Agusto de 1824, y reglamento de 21 de Nov'b de 1828, conforme a las facultades con y me hallo autorizado por el Supremo Gobierno á nombre de la Nacion á reserva de la aprobacion de la ex'ma Asemblea Departmental y bajo los condiciones seguientes.

1° Podra cercarlos sin perjudicar las travesidas caminos y servidumbres; los disfrutara libre y esclusivamente destinandolas al mejor cultivo y uso le sea coveniente. 2° Solicitara del Juez respectiva le de la posesion Juridica en virtud de este despacho por el cual se le demarcaran los linderos con los respectivos mojoneras—poniendo á mas de ellos algunos arboles frutales ó conocido utilidad.

3° El terreno de q. se hace donacion es puramente de once sitios de ganada mayor en los margenes del rio de S. Joaquin y comenzará su medicion desde la orilla de la Sierra Nevada. El Juez que diere la posesion lo hará media con entero arreglo a ordenanza y á vista deseño ó plano topografia q. presentará el agraciado.

En consecuencia mando que teniendose el presente titulo por firme y valedero. Se tome razon de el en el libro a y corresponde y se entregue al interesado q. su resguardo y demas firmes.

Dado en la casa de Gobierno en la Ciudad de Los Angeles, en papel comun, por no haber Sellado, a los cuatro dias del mes d 3 Abril de mil ochocientos cuarenta y seis. PIO PICO.

JOSÉ MATIAS MORENO, Srvo. Gnta.

Queda tomada razon de este superior despacho en el libro respectivo. MORENO.

Deposited in the government archives this 8th day of June, 1849, by Bernard McKenzie.

J. D. S. W. H. HALLECK,
R. S. DEN. Bt. Capt. and Secty. of State.

Office of the Surveyor-General of the United States for California.

I, J. W. Mandeville, Surveyor-General of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory, or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle private land claims in California, by virtue of the power vested in me by law, do hereby certify that the three (3) preceding and hereunto annexed pages of tracing paper, numbered from one to three (3) inclusive, exhibit a true and accurate copy of a document endorsed as follows, viz: Deposited in the government archives this 8th day of June, 1849, by Bernard McKenzie. H. W. HALLECK,
Bt. Capt. and Sec'ry of State.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 13th day of April, A. D. 1858.

[SEAL.] J. W. MANDEVILLE,
U. S. Surveyor-General for California.

Filed this 15th June, 1858. C. SIMS, Cl'k.
Per J. H. COLEMAN, Dep.

San Francisco, February 12, 1853.

On this day, before Commissioner Hiland Hall, came James L. Ord, a witness on behalf of the claimant, Vicente Gomez, petition No. 569, and was duly sworn, his evidence being given in English.

The U. S. Associate Law Agent was present.

In answer to inquiries by counsel for claimants, the witness testified as follows:—

My name, James L. Ord. My age is twenty-nine years, and I reside at Monterey, and am by profession a physician. I came to California as assistant surgeon in company F, of the third regiment of U. S. artillery, in January, 1847, and I have since that time resided in Monterey.

In the latter part of said month of January, I commenced occupying a portion of the custom-house at Monterey. One end of it I occupied with Capt. W. E. Sherman, of the army, as our quarters, and the other end was occupied as a hospital, and was under my charge. The centre of the building was used as a depositary for naval stores. In the room occupied as a hospital were Spanish papers, which I supposed were old custom-house papers of no value. The papers were on shelves which had doors to them. Some of the doors had keys in them, but were not locked. The papers were not

in charge of any one, to my knowledge. My hospital steward asked me if they were of any value, and I told him I did not know that they were, and some of them were used by him in putting up preparations for the sick. I used some myself as waste paper. When I first used them, I did not understand Spanish, and it was a month or two before I found out they were of value. From seeing the papers afterwards in charge of Capt. Halleck, I think some of those used were expedientes. I cannot form an idea of the quantity of papers thus used. I do not recollect about seeing maps in the papers; some of them had numbers on the outside. From January until May the papers were in such exposed condition. I left Monterey for a time about the first of May. When I returned in June, the papers were not in the place in which they were when I went away.

In answer to questions by the associate law agent, the witness says he thinks Capt. Halleck took charge of the papers, when they were moved from the custom house. JAMES L. ORD.

Sworn and subscribed before me,

HILAND HALL, Com'r.

Endorsed: No. 569. Vicente Gomes, Pinole Grounds. Deposition of James L. Ord, taken before Com'r Hiland Hall.

Filed in office February 12, 1853.

GEO. FISHER, Sec'y.

Recorded in Ev. B, Vol. 2, p. 571, E, F, & G.

GEO. FISHER, Sec'y.

Office of the Surveyor-General of the United States for California.

I, J. W. Mandeville, Surveyor-General of the United States for the State of California, and as such having in my office and in my charge and custody, the papers of the late board of commissioners to ascertain and settle private land claims in California, do hereby certify that the two preceding pages exhibit a full, true and correct copy of an original paper, together with the endorsements thereon, as the same appears on file in case No. 569, on the docket of said board of commissioners on file in my office.

In testimony whereof I have hereunto signed my name
[SEAL.] officially and affixed my seal of office at the city of San Francisco, this 15th day of May, A. D. 1858.

J. W. MANDEVILLE,
U. S. Surveyor-General, California.

It is hereby stipulated that the foregoing copy of a deposition of Dr. James L. Ord may be read in evidence on the part of claimant in case of Robert B. Neleigh vs. The United States, now pending in the District Court of the United States of the Southern District

of California, No. 331, subject to all legal objections except as to form.

P. ORD, U. S. Att'y.
FRED'K A. SAWYER,
for Claimant.

May 17th, 1858.

Filed this 15th June, 1858.

C. SIMS, Cl'k.
Per J. H. COLEMAN, Deputy.

(For map see original between pages 108 and 109.)

United States District Court for the Southern District of California.

UNITED STATES
vs.
ROBERT B. NELEIGH. } No. 331.

State of California, City and County of San Francisco, *ss.*

Deposition of Thomas O. Larkin, a witness produced, sworn and examined on the part of the defendant or claimant in the above entitled action, this 30th day of June, A. D. 1858, before me, C. J. Brenham, a Notary Public in and for said city and county, duly commissioned and sworn, at my office, No. 155 Montgomery street, in said city.

Present: P. Ord, Esq., U. S. District Attorney for the Southern District of California, and Frederick A. Sawyer, Esq., Attorney for Defendant or claimant.

The witness having been by me, the said notary, duly sworn, that the evidence he should give in the said above entitled action, should be the truth, the whole truth, and nothing but the truth, duly testified as follows:

Question. What is your name, age, and residence?

Answer. My name is Thomas O. Larkin, I am fifty-six years old, and reside in the city of San Francisco.

Question. How long have you resided in California?

Answer. From 1832 to 1850; at times from 1851 to the present day.

Question. Did you ever fill any official station under the government of the United States?

Answer. I did. I was United States Consul.

Question. Did your situation give you an opportunity to know all the considerable and distinguished men of California?

Answer. My official as well as private capacity, gave me every opportunity of knowing and being acquainted with all the Mexican officers and men of note, in Alta California.

Question. Do you know General José Castro, or as he was called in 1845 and 1846, Col. José Castro?

Answer. I was personally acquainted with José Castro, his father, his wife and children. I knew him from 1832 to the time he left the country for Lower California in 1856 or 1857, where he now resides, as Military Commandant under the Mexican Government. He was known, in 1845 and 1846, as General José Castro, and had

command of troops in Alta California. He was in full command of the California troops July 7th, 1846.

Question. Do you know or did you hear of any other Colonel or General Castro in California except one?

Answer. I am confident there was, in Alta California, no other General or Colonel Castro. I have a list of all the Mexican officers in Alta California, January, 1846, containing the grades, pay, arrears, &c., which I copied from the government books at the time. In this list José Castro appears as General or Colonel in the Mexican army. THOMAS O. LARKIN.

I further certify that the foregoing deposition, when completed, was read over by the said witness, that he did not desire to make any correction, but pronounced the same to be correct in every particular, and thereupon subscribed his name in my presence.

In witness whereof, I have hereunto set my hand and affixed my official seal the 30th day of June, A. D. 1858.

[SEAL.] C. J. BRENHAM, Notary Public.

It is hereby stipulated that the above deposition may be read in evidence in this cause, subject to all objections and exceptions, except as to the form of taking the same, as if taken on notice before a commissioner. P. ORD, U. S. Attorney.

San Francisco, June 30, 1858. FRED'K A. SAWYER.

Filed July 7th, 1858. C. SIMS, Clerk.

In the United States District Court for the Southern District of California.

UNITED STATES vs. ROBERT B. NELEIGH. } No. 331.

State of California, City and County of San Francisco, *ss.*

Deposition of John W. Shore, a witness, produced, sworn, and examined on the part of the defendant or claimant in the above-entitled action, this 25th day of June, A. D. 1858, before me, the undersigned C. J. Brenham, a notary public in and for said city and county, duly commissioned and sworn, at the archives office of the United Surveyor-General for the State of California in said city of San Francisco.

Present: P. Ord, Esq., U. S. District Attorney for the Southern District of California, for plaintiff, and F. A. Sawyer, Esq., representing defendant or claimant.

The witness, having been by me, the said notary, duly sworn that the evidence he should give in the said action should be the truth, the whole truth, and nothing but the truth, testified as follows:—

Question. What is your name, age, residence, and present occupation?

Answer. My name, John W. Shore. I am thirty years old; my residence is Los Angeles; I am at present a clerk in the archives office of the United States Surveyor-General for California.

Question. Are you acquainted with Governor Pio Pico? if yea, how long have you known him? and where did you know him?

Answer. I am acquainted with him; have known him since January, 1851, in the county of Los Angeles.

Question. Are you acquainted with the handwriting of Pio Pico? if yea, state how you became acquainted with his handwriting.

Answer. I am. I became acquainted with his handwriting by seeing him write frequently and receiving letters from—

Question. Look at the document now presented to you, and state whether the signature at the bottom of it is or is not the signature of Pio Pico.

Answer. I believe that to be his genuine signature; I have examined many hundreds of his signatures in the Spanish archives in the Surveyor-General's office, and I believe this to be genuine.

Question. What is the document presented to you when you answered the last interrogatory?

Answer. I believe it to be an original title or grant for eleven square leagues of land on the banks of the San Joaquin River made by Governor Pio Pico to Lt.-Col. José Castro, dated the 4th day of April, 1846.

Question. Are you familiarly acquainted with the Spanish archives in the Surveyor-General's office of California? if so, state your opinion of the document now before you and alluded to in the last interrogatory.

Answer. I am familiarly acquainted with the greater portion of the Spanish archives in the Surveyor-General's office, and more particularly with those relating to missions and land titles, and the proceedings of the Departmental Assembly. From the signatures attached to the document, I believe it to be a genuine grant.

Cross-examined by P. Ord, Esq., District Attorney for Southern District of California.

Question. How long have you been employed in the Surveyor-General's office?

Answer. Since October, 1857.

Question. Did you ever see the papers above referred to before you came into the Surveyor-General's office?

Answer. Never. JOHN W. SHORE.

It is hereby agreed that the above deposition may be introduced and read in evidence, subject to the same objections as if taken on due notice before a commissioner.

P. ORD, U. S. Att'y.
FRED'K A. SAWYER, for claimant.

And I further certify that the foregoing deposition was taken and

reduced to writing by me, on the said 25th day of June, 1858, and, when completed, was read by me to the said witness, who did not desire to make any correction, but pronounced the same to be correct in every particular, and therefore subscribed his name in my presence.

In witness whereof I have hereunto set my hand and affixed my official seal, this 25th day of June, A. D. 1858.

[SEAL.] C. J. BRENHAM, Notary Public.

Filed July 7th, 1858. C. SIMS, Clk.

THE UNITED STATES, Appellant,
vs.
ROBERT B. NELEIGH, Resp't. } Case No. 331.

Deposition of Abel Stearns, taken before C. Sims, United States Commissioner for the District of California, at the United States court-house in the city of Los Angeles, on Saturday, the 4th day of December, A. D. 1858, at 10 o'clock A. M. on said day, on behalf of the United States, by stipulation of parties, appl't and resp't, to be used as testimony in a certain cause now pending in the U. S. Dist. Court for the South. Dist. of California, being case No. 331 on the docket of said court, wherein the United States are appellants, and Robert B. Neleigh is appellee.

Present, J. R. Gitchell, U. S. Dist. Att'y, attorney in *in* behalf of the appellants, and F. A. Sawyer, in behalf of appellee.

Abel Stearns, being duly sworn, says, answers to the interrogatories of attorneys as follows:—

Quest. State your name, age, and place of residence.

Ans. My name is Abel Stearns; reside in Los Angeles, State of California; am sixty years old.

Quest. How long have you resided in California?

Ans. Twenty-nine years.

Quest. Do you know Pio Pico and Col. Don Jose Castro; and if so, how long have you known them?

Ans. I have known them since the years 1829 and 1830.

Quest. Were you acquainted with them during the years 1845 and 1846; and if so, what positions did they occupy under the government of California?

Ans. I was acquainted with them. Pio Pico was Governor of the Department of California during those years, and José Castro was Commandant-General of California; and Pio Pico resided in Los Angeles, the capital, and Jose Castro resided the first part of the year 1845 in Los Angeles, and the remainder of that year and 1846 he resided at Monterey.

Quest. State, if you know, the relationship existing between them during the fore part of the year 1846, and if the same was friendly or not.

Ans. It was generally understood that their political relationships were not very friendly.

Quest. Do you know of any action being taken on the part of Pio Pico, as governor, against Don Jose Castro; and if so, what action, and at what time?

Ans. In June, 1846, the governor, Don Pio Pico left Los Angeles with an armed force of citizens, as I understood, to proceed to Monterey, for the purpose of investigating the conduct of the commandant-general, Castro, and with the intention to remove him from office.

Quest. State, if you can, what time in June Pio Pico left Los Angeles for that purpose, and how long previous to this time the difficulty which you have spoken of had existed between Pio Pico and Col. Jose Castro.

Ans. Pio Pico left Los Angeles on the 17th day of June, 1846, to the best of my recollection. The political differences had existed for some months previous, to the best of my recollection.

Cross-examination.

Quest. Do you think, from your acquaintance with Pio Pico and Jose Castro, that the political differences which you have alluded to made any serious difference in their friendly relations to each other?

Ans. I do not think that, as private gentlemen, these political differences would have made any change in their friendship, although such might have been the case; but I never heard that it did.

ABEL STEARNS.

In District Court of U. States, Southern District of California.

THE UNITED STATES
vs.
ROBERT B. NELIGH.

It is hereby agreed and stipulated between the attorneys of the respective parties, that the testimony of Abel Stearns shall be taken and received in this cause as a part of the proof therein, subject to all legal exceptions, except as to the manner of taking the same.

J. R. GITCHELL, Dist. Atty.

Dec. 4, 1856.

FRED'K A. SAWYER,
Att'y for Claimant.

I, C. Sims, of the city and county of Los Angeles, and State of California, commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions under the acts of Congress, approved September 24th, A. D. 1789, February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of clerk of the United States Court of the Southern District of California, and by special appointment by the United States Circuit Court for the State and Circuit of California, do hereby certify that the foregoing depositions of Abel Stearns was taken before me on the 4th day of December, A. D. 1858, according to the agreement and stipulation of the said parties, at the United States District court-house in the city of Los Angeles and State of California, in

behalf of the appellant; that the said Abel Stearns was by me duly sworn according to law as a witness in said cause in the caption of this deposition mentioned, and after being so sworn his testimony was by reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof I hereunto set my hand and private seal (having no seal of office) this 4th day of December, A. D. 1858.

[SEAL.] C. SIMS, United States Commissioner.

Filed this 4th day of December, A. D. 1858.

C. SIMS, Cl'k.
P'r W. W. STETSON, Dep'ty.

THE UNITED STATES
vs.
ROBERT B. NELIGH. } Six leagues on San Joaquin River..

It is hereby stipulated that the annexed deposition of Don Pio Pico may be introduced and read in evidence in the above entitled cause, subject to the same objections as if taken on due notice, and it is further agreed, stipulated, and admitted, that the title or grant inclosed with this deposition, though not attached to the same, is the title referred to by the witness, and the same which he testifies to as an original title issued by him as governor of the department of California to Don Jose Castro, and that his signature and the signature of Moreno he has testified are genuine.

FRED'K A. SAWYER, Att'y for Claimant.
J. R. GITCHELL, Dist. Att'y.

Filed 4th Dec'r, 1858. C. SIMS, Cl'k.
P'r W. W. STETSON, Dept'y.

THE U. STATES, Appellant,
vs.
ROBERT B. NELIGH, Resp't. } Case No. 331.

Deposition of Pio Pico, taken before C. Sims, United States Commissioner for the District of California, at the United States courthouse in the city of Los Angeles on the 26th day of November, A. D. 1858, at 3 o'clock P. M. on said day, on behalf of the claimant by stipulation of parties, app't and resp't, to be used as testimony in a certain cause now pending in the U. S. Dist. Court of the South. Dist. of California, being case No. 331 on the docket of said court, wherein U. States are appellant and Robert B. Neligh is appellee. Present, J. R. Gitchell, U. S. Dist. Att'y, attorney in behalf of the appellants, and F. A. Sawyer in behalf of appellees, and J. J. Warner as interpreter.

Pio Pico, being duly sworn, says, answers to the inters. of attorneys, as follows:—

Quest. What is your name, age, and place of residence?

Ans. My name is Pio Pico; my age is fifty-seven years old; my place of residence is Los Angeles County.

Quest. Have you been examined in this *this* case before?

Ans. I do recollect of having made a deposition *a deposition* in this case before.

Quest. What is the document now presented to you?

Ans. It is a title extended in favor of Col. José Castro by the Governor of the Department of the Californias, for eleven leagues of land upon the banks of the San Joaquin River, made upon the fourth day of April, 1846.

Quest. Who was the Governor of California at that date?

Ans. Pio Pico, myself.

Quest. Is that your signature attached to this grant?

Ans. It is.

Quest. Do you know the signature of Jose Matias Moreno?

Ans. Yes.

Quest. Is that his signature attached to this grant as Secretary ad interim?

Ans. Yes, it is; having often seen him write his name, and the many letters I have received from him, as well as his having been Secretary (official) of the Government of the Department of the Californias.

Cross-examination.

Questions by J. R. Gitchell, Esq., U. S. Dist. Attorney—

Question. Did there or not exist a difficulty between yourself as Governor and Don José Castro as Military Commander of the Department of California during the years 1845 and 1846?

Ans. I do not recollect.

Quest. Did you not, during the spring of 1846, equip and start from Los Angeles a company to displace said Castro, or to force from him a portion of the revenue for the support of the Civil Department?

Ans. I do not recollect of having taken any such steps for such a purpose.

Quest. From what source was the revenue received for the support of the government during your administration?

Ans. They proceeded from the duties paid by some vessels in the port of San Pedro; during my administration one vessel entered and paid duties, this being all the revenue received for the support of the civil government during my administration.

Quest. Was or was there not revenues received at other ports than San Pedro during your administration? If so, at what posts, and who received the same?

Ans. I do not recollect of there being any received by the Executive Government. Duties were paid in the port of Monterey, and received by the collector of that port. The collector of that port was Juan B. Alvarado.

Quest. Did you not make a demand on the collector for funds? If so, what was his answer?

Ans. I do not recollect of making any such demand.

Quest. During the latter part of the year 1845, and the first part of the year 1846, were you and Don José Castro on friendly terms?

Ans. We were friendly.

Direct-examination in chief resumed.

Quest. If there had been any political differences or difficulties between yourself and Gen. Castro, did or would they have produced any breach of private friendship between you?

Ans. By no means.

Cross-examination resumed.

Quest. If you were raising forces to drive a man from the Department, would you at the same time grant him lands in the Department?

Ans. Yes, I should, if he should ask for them, as soon as to any other person.

PIO PICO.

Sworn to and subscribed to before me, this 26th of Nov. 1858.

C. SIMS, U. S. Commissioner.

Examination of Pio Pico adjourned by consent of counsel to the 3d day of December, 1858, 10 o'clock A. M.

C. SIMS, Commissioner.

Examination of Pio Pico resumed this 3d day of December, 1858, 10 o'clock A. M., according to adjournment—

Questions by Claimant's Counsel.

Quest. What did you mean when asked, on cross-examination, whether there had ever been any difficulty between yourself and Col. Castro, while you were Governor of California, by answering that you did not recollect?

Ans. I wished to convey the idea by saying that I did not recollect, that I did not choose to answer the question on the ground that I did not consider it pertinent to the declaration which I was giving.

Quest. Will you be kind enough to state if there was any political difficulty between yourself and Col. José Castro while you were Governor? and if so, state what was the nature of it and when it occurred.

Ans. I am not disposed to answer this question, judging it irrelevant, and for the reasons which I have previously given to the examining attorneys, that a relation of the history of the affairs of the government of California during my administration would be long and tedious, and might give rise to a great multiplicity of interrogations and depositions, which would be both disagreeable and inconvenient to me, and, being matters of history, can be fully obtained from other sources.

Quest. Was the titulo which was presented to you on your examination in chief, on the 26th of November, 1858, being during your first examination in this deposition, signed and executed by you as Governor of California, on the day it bears date, to wit, on the 4th day of April, 1846?

Ans. I believe it was signed by me as Governor on the day on which it bears date, to wit, the 4th day of April, 1846.

Cross-examination resumed.

Quest. Was there any particular circumstance connected with the signing of this title which fixes in your mind the date of its execution?

Ans. There was not.

Quest. Do you know the handwriting in the body of this title? and, if so, whose is it?

Ans. I am not positive, but I think it to be the writing of Francisco Lopez, a youth and clerk in the office of the Secretary, who has since died here in the county of Los Angeles.

PIO PICO.

Sworn and subscribed to before me, this 3d Dec. 1858.

C. SIMS, U. S. Commissioner.

I, C. Sims, of the city and county of Los Angeles, and State of California, commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions under the acts of Congress approved September 24th, A. D. 1789, February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of Clerk of the United States Court of the Southern District of California, and by special appointment by the United States Circuit Court for the State and Circuit of California, do hereby certify that the foregoing depositions of Pio Pico was taken before me on the 26th day of November, A. D. 1858, and on the 3d day of Dec. A. D. 1858, according to the stipulations and consent of the said parties, at the United States District court-house, in the city of Los Angeles and State of California, in behalf of the appellees. That the said Pio Pico was by me duly sworn according to law as a witness in said cause in the caption of this deposition mentioned, and, after being so sworn, his testimony was by me reduced to writing in his presence, and, after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof, I hereunto set my hand and private seal (having no seal of office) this 3d day of December, A. D. 1858.

[SEAL.] C. SIMS, United States Commissioner.

Filed this 4th day of December, A. D. 1858.

C. SIMS, Clerk.

Per W. W. STETSON, Deputy.

United States District Court for the Southern District of California.

UNITED STATES, Appellants, } Docket No. 331.
vs.
ROBERT B. NELEIGH, Appellee. } Transcript No. 320.

It is hereby stipulated that this cause be now submitted upon the papers in the case and briefs to be filed forthwith.

FRED'K A. SAWYER, Att'y for Claimant.
J. R. GITCHELL, Dist. Att'y.

Filed 7th Dec. 1858. C. SIMS, Cl'k.

In the United States Court for the Southern District of California.

ROBERT B. NELEIGH, Appellee, } No. 331.
vs.
THE UNITED STATES, Appellants. }

Fred'k A. Sawyer, being sworn, deposes and says, that, as counsel for the claimant, he was very desirous of obtaining from the archives in the custody of the Surveyor-General for the State of California, which are kept in the city of San Francisco, the original titulo or grant in this case, in order that it might be used on the trial of this cause; that, as a general rule, the surveyor-general, acting under instructions from the government at Washington, never permits original papers to be taken out of his immediate custody, but that deponent, thro' the assistance of Mr. E. M. Stanton, attached to the attorney-general's office at Washington, and at that time on official business in San Francisco, did, on the 17th of November, 1858, obtain leave to bring with him to Los Angeles, on the steamer which left San Francisco for San Pedro on the 18th of said November, the original grant in this case, he (the deponent) giving, under the direction of the said E. M. Stanton, a receipt that after said document had been used on the trial of this cause, to take place at the December term of the said District Court for the Southern District of California, to be held on the first Monday of said December in Los Angeles, that this deponent should carry the said grant back to San Francisco, and deposit it in the archives of Spanish records in the surveyor-general's office aforesaid, from which it had been taken.

The affiant, therefore, prays that an order of court may be entered permitting him to withdraw the said original titulo from among the papers presented before the court in the trial of this cause, for the purpose of restoring it to the custody aforesaid.

FRED'K A. SAWYER.

Sworn to and subscribed before me, this the 21st Dec'r, 1858.
C. SIMS, Clerk.

Filed Dec'r 21st, 1858. C. SIMS, Clerk.

United States District Court, Southern District of California, December Term, 1858.

UNITED STATES, Appellants,
vs.
ROBERT B. NELEIGH, Appellee. } 331.

Upon hearing and reading the affidavit on file of Frederick A. Sarner, of counsel for the claimant in this cause, and on motion of said Sawyer, it is ordered that the said Sawyer be allowed to withdraw from among the papers used in the trial of this cause, the original titulo or grant upon which this claim is founded.

ISAAC S. K. OGIER,
U. S. Dist. Judge.

Filed Dec'r 21st, 1858. C. SIMS, Clerk.

United States Court, Southern District of California, December Term, 1858.

UNITED STATES, Appellant,
vs.
ROBERT B. NELEIGH, Appellee.

It is hereby stipulated that this cause shall rest and stand without decision or decree until the June term of this court, to be held in Monterey, 1859, when the same shall be re-argued before the court.

FRED'K A. SAWYER, for Claimant.
J. R. GITCHELL,
U. S. Dist. Att'y, for Appellants.
Per E. DRAWN, Acting Att'y.

Filed Dec. 22, 1858. C. SIMS, Clerk.
Per W. W. STETSON, Dep'ty.

ROBT. NELEIGH, Appee.
vs.
THE UNITED STATES. } Case No. 331.

Deposition of Jose Matias Moreno, taken before C. Sims, United States Commissioner for the District of California, at the United States court-house in the city of Monterey, on Monday, the 13th day of June, A. D. 1859, at 10 o'clock A. M. on said day, on behalf of the appellee, by the consent of the parties to be used as testimony in a certain cause now pending in the U. States Dist. Court for the Southern Dist. of Cal'a, being case No. 331 on the docket of said court, wherein U. States are appellants, and Robt. Neleigh is appellee. Present, J. R. Gitchell, U. S. Dist. Attorney in behalf of the appellants, and Messrs. Sawyer and Harvard in behalf of appellees; and John Runrards as interpreter.

Quest. What is your name, age, and place of residence?

Ans. My name is Jose Matias Moreno. I am forty years of age, and I reside in San Diego, in the State of California.

Quest. Did you ever fill any public office under the government of the Californias; and if so, what, and when?

Ans. In the year 1846 I was provisional Secretary of State of the government of the Californias.

Quest. When were you appointed to this office, and when did you commence to act, and how long did you act?

Ans. I took the oath of office on the 1st of May, 1846, and I commenced to act the same day I took the oath; and I continued to act four months in California. I left Los Angeles on the night of the 10th August, 1846, in company with Pio Pico.

Quest. Who was governor of the Californias at the time you filled this office?

Ans. Don Pio Pico.

Quest. Why did you and Pio Pico leave Los Angeles on the night of the 10th of August, 1846?

Ans. Because Commodore Stockton was at San Pedro with his forces, and Col. Fremont was at San Diego, both marching to the city of Los Angeles. Great disorder prevailed in California. The governor had no troops to oppose them; a session of the Departmental Assembly was held on the 10th of August, 1846, in Los Angeles, and it was resolved that the governor, Don Pio Pico, should go to the capital of Mexico to render an account to the government of the state of things.

Quest. Look at the paper now handed to you, bearing date 4th of April, 1846, purporting to be a grant from Gov. Pio Pico, for 11 leagues of land to José Castro, situated on the river San Joaquin, commencing at the foot of the Sierra Nevada, and extending down the said river, and say whether you recognize the signatures to the same.

Ans. The signature of Pio Pico I recognize as his genuine signature; I have seen him write and know his handwriting; my signature is also genuine, also the certifying of the entry signed by me is genuine.

Quest. Was there a book of "Tomo Razon" (Register Book) for the year 1856? and if so, describe it.

Ans. There was a book called "Tomo Razon" for the year 1846, and when a grant was made of any portion of land, an annotation was made in that book, stating the names of the parties for whom the grant was made, and also the number of leagues of land granted, and then this annotation was signed with the rubric of the secretary.

Quest. Was it your practice as secretary to make an annotation in this registry of *of* all the grants which were officially signed by you?

Ans. It was not only my practice, but it was my duty to make an entry of all the grants made in my office, or coming from my office.

Quest. Did you make an entry of this grant to Castro, for the lands on the San Joaquin, which has been shown you?

(Question withdrawn.)

Quest. State all you know in relation to the issuance of the title to José Castro, and its entry in the book "Tomo Razon."

Ans. This grant was made at the time I was not secretary, and when the government of the State had no secretary. The secretary, José MaCovorubios, was absent in the city of Mexico on duty, consequently I did not see this grant made. Afterwards, when I took possession of the office of secretary, after the 1st of May, I signed the grant by order of the Governor, because it was necessary, under the law of Mexico, that the secretary should sign every grant together with the Governor. In this way I signed two or three grants, when I observed to the Governor that I signed these two (2) or three (3) titles which were made at the time that I was not secretary; then the Governor told me that thereafter I should affix the date to my signature at the time of my signing it. Afterwards I put down the date of my signing these grants. I remember *I remember*, I think it was on the fourth of May, I signed a grant in favor of Abel Stearns. This was the first to which I affixed the date.

Quest. Was it your practice to note on the grant itself that you had made an entry on the book of "Tomo Razon" at the time of making said entry?

Ans. I always did.

Quest. Do you recollect the time that you signed this grant? if so, state when it was.

Ans. I do not remember exactly the date, but it was in the beginning of May; I think it was between the first and the fourth of May.

Quest. Do you recollect at the time you made an annotation in the registry book of this grant, whether there was any expediente accompanying the same, and if so, of what papers did it consist?

Ans. I did not see any expediente, as the title was made before my term in office. I did not take any pains to look for the expediente, because it was not necessary for me to have it.

Quest. Do you recollect when this title was delivered from the office of the Governor to the party interested?

Ans. I do not know. The Governor took the title and delivered the same to the agent of the interested party; but I think some time in the month of May.

Cross-examination by J. R. Gitchell, U. S. Dist. Att'y.

Quest. To whom were the grants made previous to your being secretary, that you signed without redating?

Ans. I do not remember; I see that this grant is one of those without date.

Quest. For what lands were said grants made?

Ans. I do not remember.

Quest. What circumstances are connected with this title, that you recollect the signing of it so clearly?

Ans. No more than that the grant was made to Don José M. Castro, who was then Commandante General of California.

Quest. Was this the first grant that you signed after coming into office?

Ans. I do not know whether it was the first or not. It was one of the first cases. It might have been the second or third, but not after the third.

Quest. Where were you at the time the grant was signed?

Ans. I was at Los Angeles, in my office.

Quest. Where was Pio Pico at this time?

Ans. He was also there.

Quest. Did Pio Pico, during the month of May or June, 1846, start for the North, and if so, in what manner, and for what purpose?

Ans. During the month of May, Pio Pico was at Los Angeles. In the month of June he started to Monterey with myself as secretary and other officers, on his official duties.

Quest. At what time did you arrive at Monterey?

Ans. We did not come to Monterey. We came as far as San Luis Obispo, at the Ranch of Santa Margarita.

Quest. Had Pio Pico with him a military force on the excursion?

Ans. Yes.

Quest. For what object did he bring that force?

Ans. There were several reasons for it. As there was a difficulty between the Governor and Jose Castro, he went to try to settle it amicably, or by force of arms. Also, Col. Fremont, with his force, was at the North.

Quest. What was the difficulty between Pio Pico and Jose Castro, and how long had said difficulty existed?

Ans. The difficulty began about the year 1845, in the month of August or September, for certain usurpation of power on the side or part of Jose Castro, to which Governor Pico would not consent. The authority of Jose Castro being purely military.

Quest. What was the usurpation of power upon the part of Castro?

Ans. There were several. Jose Castro, as military chief, could alone control military affairs, and he seized upon the public revenues, and by his interference with the Prefects and other authorities, he prevented the disposition of the Governor from taking the due course.

Quest. At what time did Castro take control of the revenues arising from the custom-house?

Ans. About the year 1845, in September or October.

Quest. Until what time did he continue to take control of and disposal of the revenues?

Ans. Up to the time he left California.

Quest. From the time that Castro seized the revenues, until he and Pico met at Santa Margarita, were they or not on friendly terms?

Ans. Notwithstanding the difficulty owing to their respective positions, they had to regard each other with due consideration. There

was some private correspondence between them, and Governor Pico always endeavored to soften the rebellious disposition of Jose Castro.

Quest. What was the nature of the private correspondence between them, and what did it relate to?

(Objected to by counsel for claimant, on the grounds that the question indicates that it was in writing, and that it ought to be produced.)

Ans. Their private correspondence related to the political affairs of the country. It is customary in Mexico that two authorities, one military and the other civil, besides their official correspondence, have some private character in regard to the same matters.

Quest. At what date did Pio Pico and Jose Castro meet at Santa Margarita, and did their reconciliation there then take place?

Ans. I am not now certain about the date, but I think between the 10th and 12th of July, 1846. A reconciliation took place between them. Castro was gathering forces. Monterey had been taken by the United States forces. And Pio Pico had with him his forces, and Castro sought his friendship for the sake of the common defence of his country.

Quest. After the reconciliation, where did Pio Pico and Castro go?

Ans. Both set out for Los Angeles. Castro went first, and Pico remained two days at San Luis Obispo. Castro preceded him three days.

Quest. Did Castro leave the State of California with you and Pico, or did he leave about the same time, and join Pico outside the limits of the State?

Ans. The same night I and Pico left Los Angeles, Castro left also. It was determined to take the road to Sonora, by the river Colorado. Castro took the road to San Bernardino and Temecula, and Pio Pico took the road to San Juan, Capistrano, and San Luis Rey, to meet Castro at Temecula, but Col. Fremont intercepted Pio Pico. Pio Pico went to his Ranch Santa Margarita. I stopped at San Luis Rey incognitio. Pio Pico did not go to Sonora, but went to Lower California.

Quest. Who was the agent of Castro in procuring this grant from Pico?

Ans. I do not know, from the fact that it was made before I went into office.

Quest. Who was the agent of Castro to whom this title was delivered?

Ans. I do not know. The governor presented the grant to me for my signature, and then sent the same to—I don't know to whom; but it was shortly after, in the month of May.

Quest. Was Jose Castro in the city of Los Angeles any time between the first of October, 1845, and the month of July, 1846; and if so, when?

Ans. I do not recollect; but I remember of having seen him at Los Angeles during the month of July, 1845.

Direct examination resumed by counsel for claimant.

Quest. Do you think that the political differences between Pio Pico and Jose Castro made any difference in their private friendship?

(Question objected to by U. S. Dist. Att'y.)

Ans. It certainly caused some disagreeable feeling between them; not enough, however, to break up all friendly relations between them.

Quest. Where did you reside previous to the time you were appointed Provisional Secretary of State?

Ans. I had no fixed residence. I had business in San Diego and Lower California, and was travelling the most of the time. In the month of April I left the frontier of Lower California, and arrived at Los Angeles on the 22d April. The whole of the month of March I was on the frontier of Lower California, and at the beginning of April I started for Los Angeles, and I arrived there on the 22d April. JOSE MATIAS MORENO.

Sworn and subscribed before me, this 13th day of June, 1859.

C. SIMS, U. S. Commissioner.

I, C. Sims, of the city and county of Los Angeles, and State of California, commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions under the acts of Congress approved September 24th, A. D. 1789, February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of clerk of the United States Court of the Southern District of California, and by special appointment by the United States Circuit Court for the State and Circuit of California, do hereby certify that the foregoing deposition of Jose Matias Moreno was taken before me on the 13th day of June, A. D. 1859, according to the consent and agreement of the said parties, at the United States District court-house in the city of Monterey and State of California, in behalf of the appellees; that the said Jose Matias Moreno was by me duly sworn according to law as a witness in said cause in the caption of this deposition mentioned, and, after being so sworn, his testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof I hereunto set my hand and private seal (having no seal of office), this 13th day of June, A. D. 1859.

[SEAL.] C. SIMS, United States Commissioner.

Filed this 14th day of June, 1859. C. SIMS, Cl'k.

ROBERT B. NELEIGH, Appellee,
vs.
THE UNITED STATES, Appell't. } Case No. 331.

Deposition of Jacob P. Leese, taken before C. Sims, United States

Commissioner for the District of California, at the United States court-house in the city of Monterey, on Tuesday, the 14th day of June, A. D. 1859, at 8 o'clock P. M. of said day, on behalf of the appellee, to be used as testimony in a certain cause now pending in the U. S. Dist. Court for the South'n Dist. of California, being case No. 331 on the docket of the said court, wherein the U. States are appellants and Robert B. Neleigh is appellee.

Present, J. R. Gitchell, attorney in behalf of the appellants, and F. A. Sawyer, att'y in behalf of appellee.

Quest. What is your name, age, and place of residence?

Ans. My name is Jacob P. Leese, I am 49 years of age, and my residence is in Monterey city and county.

Quest. Will you relate what you know of the civil war in California which took place in the years 1844 and 1845, and your means of information?

Ans. In the year 1844 I was first alcalde in the district of Sonoma some time, I cannot exactly say, but think it was in the latter part of October or first of November. Juan B. Alvarado, who was formerly governor of the State of California, sent a messenger to the town of Sonoma, informing General Valligo, who was commander of the North, inviting him, with all his military officers and the people of that jurisdiction, to meet him and General Castro at the ranch known as San Pablo, on the Bay of San Francisco; that himself and General Castro had a force composed of the people north of Monterey, and wished them to unite with him in sending the officers and soldiers under Michelterrena, as the inhabitants of Monterey could not live happy on account of their conduct. Gen. Valligo informed me of the message that Alvarado had sent him to call the inhabitants of that jurisdiction to the town of Sonoma, and requested me, as alcalde, to call the inhabitants together, and invite them to join the party of Castro and Alvarado. I refused to do so, in consequence of the position that I held in that jurisdiction. Valligo got a number of people in that jurisdiction, and crossed the bay, and went to where Alvarado and Castro were. I then, as in duty bound, immediately dispatched a mail to General Michelterrena, informing him of the application being made to me through General Valligo for the citizens of that jurisdiction in opposing the governor with his troops and soldiers, and also informing him that the opinion against him was about divided in that jurisdiction. About two weeks afterwards I received an answer from Gen. Michelterreno, thanking me for defending him on the part of the government, and for not violating my office, and to hold myself in readiness in case the government should require my assistance. A short time a report was circulated, by the return of some of the Gen. Valligo's officers, that an armistice had been drawn up between Gen. Michelterreno and the opposing party, at the place or ranch called the Laguna Seco, about 12 miles south of San Jose. After Michelterreno was informed that hostilities were not against him, but against his soldiers, after which Gen.

Michelterreno agreed to send them all out of the country within about ninety days. In the mean time Gen. Michelterreno sent his first officer in command, Don Rafael Tilleus, to Mazatland, making Castro, Alvarado, and Valligo believe that he had reported to the Mexican government that he was taking steps to fulfil his agreement in sending them out of the country. It was found out that the general had applied to Capt. Sutter for his assistance with his Indians and foreigners to hold his position. On that discovery, hostilities commenced with the Californians in the north, and Californians with foreigners at the south, against Michelterreno and Sutter's forces. Then a general revolution commenced against Michelterreno and Sutter's force. Michelterreno and Capt. Sutter with his forces marched in the month of February against the Californians and the foreigners south; and in the plains of San Fernando, in the county of Los Angeles, at the place known as Cahuenga, both forces met about the month of March, 1845, and prepared for hostilities, and really had an hostile encounter, where the American Capt. John Gant, of Sutter's company, discovered that there was foreigners on the opposite side. In the following morning at daylight received a notice from the captain of the other side that he would like to have an interview with him a short distance from their forces down the Gulch, and concealed, where they would meet on friendly terms; and after their meeting they came to the conclusion that it was ridiculous for foreigners to be fighting against each other, and withdrew their companies on each side, with a determination not take a part, neither with one side or the other, which left Gen. Michelterreno on his resources with his Mexican troops against the native Californians. Michelterreno, discovering his situation after the withdrawing of the foreigners from his command, capitulated, and was shipped out of the country about the first of April, 1845. J. P. LEESE.

I, C. Sims, of the city and county of Los Angeles, and State of California, commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions under the acts of Congress, approved September 24th, A. D. 1789, February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of Clerk of the United States Court of the Southern District of California, and by special appointment by the United States Circuit Court for the State and Circuit of California, do hereby certify that the foregoing depositions of Jacob P. Leese was taken before me on the 14th day of June, A. D. 1859, according to the consent and agreement of *of* the said parties at the United States District court-house, in city of Monterey, and State of California, in behalf of the appellee. That the said Jacob P. Leese was by me duly sworn according to law as a witness in said cause in the caption of this deposition mentioned, and, after being so sworn, his testimony was by me reduced to writing in his presence; and after having been by

me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof I hereunto set my hand private seal (having no seal of office) this 14th day of June, A. D. 1859.

[SEAL.] C. SIMS, United States Commissioner.

Filed this 15th June, 1859. C. SIMS, Cl'k.

UNITED STATES
vs.
R. B. NELEIGH.

In the United States District Court for the Southern District of California.

I do hereby certify and state under oath that I am keeper of the archives in the United States Surveyor-General's office for the State of California, and that I have under my charge all the Spanish records relating to land titles in California that are in the possession of the government of the United States, and that there is no Book of Records or "Toma de Razon" for the year 1846 to be found in the said archives. R. C. HOPKINS.

Subscribed and sworn to before me this 4th day of June, 1859.

[SEAL.] FRED'K A. SAWYER, Notary Public.

Filed in office this 17th day of June, 1859. C. SIMS, Cl'k.

(Exhibit O.)

Sesion del dia 15 de Abril de 1846.

Leida y aprobada la acta del dia 30 de Marzo po. po., se dio cuenta con el nombramiento que para Gobernador Constitucional de este Departmento higo el Ex'mo Sor, Presidente de la Republica en la persona del Ex'mo S'or Don Pio Pico, á virtud de la propriesta que elevo la corporacion en 27 de Junio anterior. Quedo impuesto al Honorable Cuerpo de la Suprema determinacion y á consequencia de haber manifestado el Ex'mo S'or que preside hallarse apto para prestar *prestar* el juramento de la ley y que por tanto se la señaluse el dia que habia de hacer.

Office of the Surveyor-General of the United States for California.

I, J. W. Mandeville, Surveyor-General of the United States for the State of California, and as such having in my office and in my charge and custody the papers of the late Board of Commissioners to ascertain and settle the private land claims in California, and also the archives of the late Spanish and Mexican Gov'ts of California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed page, numbered from one to inclusive, exhibit a true, full, and correct copy of part of the proceedings of the Departmental Assembly on the fifteenth day of

April, 1846, as the same are found of record in the archives of my office.

In testimony whereof I have hereunto signed my name officially and caused my seal of office to be affixed at the city of San Francisco, this 18 day of Feb'y, 1859.

[SEAL.] J. W. MANDEVILLE,
U. S. Surveyor-General for California.

Filed in office this 17th June, A. D. 1859. C. SIMS, Cl'k.

Translation.

(Translation of Exhibit O.)

Session of 15th April, 1846.

Read and approved the act 30th March ultimo. The subject of the appointment of Constitutional Governor of this Department by his Excellency, the President of the Republic, conferred on his Excellency Don Pio Pico in conformity to the recommendation made by this assembly on the 27th day of June last. The decision of the Supreme Government now being known to this honorable assembly, and his Excellency presiding having given notice that he is ready to take the oath of office, and that a day should be appointed for doing the same.

Filed in office this the 17th June, A. D. 1859.

C. SIMS, Cl'k.

(Stipulation of Parties.)

THE UNITED STATES, Appellants,
ads. } No. 331.
R. B. NELEIGH, Appellee.

For Lands on San Joaquin River.

It is hereby stipulated and agreed between the parties that the certificate of R. C. Hopkins, marked T, and hereunto attached, may be read in evidence in this case; also that Exhibit O and the translation thereof may likewise be read and considered as evidence in this case; also Exhibit (L), the certificate of R. C. Hopkins, keeper of the public archives, may be read in evidence on the trial of this cause.

And it is further stipulated and agreed that the deposition of José Castro in Case No. 359 in this court, and the deposition of D. Spence on 17th page of Transcript in Case No. 338 in this court, may be read in evidence on the trial of this cause, and copies of the same certified by the clerk filed in this cause June 15th, 1859.

J. R. GITCHELL, U. S. Dist. Att'y.
FRED'K A. SAWYER, Att'y for Claimant.

Filed in office this 17th day of June, 1859. C. SIMS, Cl'k.

(List of Cases referred to by Claimant.)

U. STATES vs. FREMONT.	17 vol. Howard R.
SAME vs. READING.	18 vol. do. p. 9.
SAME vs. T. O. LARKIN.	18 vol. do. p. 557.
SAME vs. CRUZ CERVANTES.	18 vol. do. p. 554.
SAME vs. VACA.	18 vol. do. p. 556.
SAME vs. SATHERLAND.	19 vol. do. p. 365.
SAME vs. ARREDUNDE.	6 Peters, p. 729, 10 Peters, 413.

Sutter case decided last term of this court.

Filed in office this 17th June, 1859. C. SIMS, Cl'k.

(Translation of document marked G.)

The citizen Pio Pico, first vocal of the most excellent departmental assembly of the Californias, and governor ad interim of the department to the inhabitants of the same, know ye that the most excellent departmental assembly in session this day has resolved and decreed the following:—

The first vocal of the most excellent assembly, being the person whom the law calls to take charge of the reins of the government of this department, which place is now vacant because the authority of Michel Terrena, in whom it was vested, has been disavowed; and whereas Don Pio Pico is the senor member (premer vocal), he will take charge, from this same date, of the departmental government *ad interim*, in accordance with the article 138 of the organic basis of the nation, and will proceed to dictate measures proper for the security and preservation of public order and tranquillity, in conformity to the powers which the laws confers upon him. Circulation this decree through all the villages of the department for their intelligence and information.

Given in the city of Los Angeles, capital of the Californias, the 15th February, 1845.

And in order that it may be known to all, I communicate it to you in order that causing it to be published with all the solemnities of a proclamation in your village and its jurisdiction, and that it be placed in the customary places, acknowledging to me the proper receipt.

God and liberty, city of Los Angeles, February 15th, 1845.

(Translation of document marked H.)

The most excellent departmental assembly by decree of this day, and in the exercise of the 17th faculty granted to it by the 134th article of the organic basis of the nation, has thought proper to propose to the supreme government for governor of the department, the following gentlemen:—

First, the most excellent Señor Don Pio Pico.
Second, Señor Don Juan Bandini.
Third, Señor Don Mariano G. Vallejo.
Fourth, Señor Don José de la Guerra y Noriega.
Fifth, Señor Don Antonio Ma. Osio.

His excellency, the governor of the department, will take notice of this for its publication and for other purposes.

Chamber of the honorable assembly of the Californias, June 27th, 1845.

PIO PICO, President.
AUGUSTIN OLVERA, Secretary.

And in order that it may be known by all, and accomplish its purpose, I order that it be published by proclamation in the villages of the department, and be circulated to whom it may concern.

Angeles, June 27th, 1845.

JOSE M. COVVARRUBIES, Secretary.

(Endorsed) Proposals for Governor.

(Translation of document marked K.)

Page (1), No. 28, 683.

Office of Justice and Public Instruction.

Most Excellent Sir: It has come to the notice of his excellency the President, that the government of your department has determined to expose at public auction all the property belonging to the missions of the same, which your excellency's predecessor had ordered to devolve upon the respective missions for the management and administration of their temporal affairs. This circumstance has served to advise me that your government should make a report upon these facts forthwith, suspending all proceedings in relation to the alienation of the property referred to until the determination of the government upon the subject.

I have the honor to say this to your excellency for the objects indicated, protesting to you my consideration and esteem.

God and liberty, Mexico, November 14th, 1845.

MONTESDEOCO.

To the Governor of the Department of the Californias.
Post of Monterey.

(Brief of Claimant.)

The United States District Court, Southern District of California.

UNITED STATES, Appellants,
vs.
ROBERT B. NELEIGH. } No. 331.

Claim for 11 leagues of land on the San Joaquin river.

The applicant founds his claim on a grant made by Pio Pico, governor of the Department of the Californias, on the 4th day of April, 1846, to Col. Jose Castro.

(The Grant.)

The genuineness of the grant is established by the testimony of Richard Somerset Den, to whose deposition reference is made, Col. John D. Stevenson, J. W. Shore, J. J. Warner, and others, as well as by Pio Pico himself, and it is not attempted to be impeached in any manner. It was put on file in the archives as early as June, 1849, nearly two years before the passage of the law under which these claims are adjudicated.

The claimant is unable to produce any document connected with his claim, except the grant itself. There is no petition, reference, or report, or other evidence of the proceedings which usually precede a grant. The claimant insists that these papers once existed, but have been lost or destroyed. Pio Pico, the granting governor, says that he never made any grant, except upon petition presented to him. The unprotected condition of the public archives, after Pio Pico abandoned Los Angeles in August, 1846; the manner in which they were scattered, lost, and destroyed, is fully set up forth in the depositions of Pio Pico, Col. J. C. Fremont, A. H. Gillespie, and Dr. Ord, on file in this case.

Pio Pico says that the petitions for land and other public papers were kept in the office of the Secretary of the Department in the executive buildings. Pio Pico left Los Angeles for Sonora in August, 1846; before his departure he says, "Under my directions and supervision they were packed in boxes, a portion of which said boxes were removed from my office to a designated place, the remainder of the boxes, from the want of time and convenience, were left remaining at the executive buildings. On my return to the country in 1848, I learnt and was informed, and it was a matter of public notoriety, that not only the documents before referred to, but many of those of the municipal government of Los Angeles, had been

scattered about, lost, and destroyed, that they had been even used as paper for the making of gun cartridges."

Colonel Fremont deposes to having taken possession of the archives which he found in the custody of Don Luis Vignes, in whose charge they had been placed, as he understood, by Pio Pico. These, according to Pio Pico's testimony, constituted only a part of said archives. That for the want of time a portion of them had to be left in the government house. These it appears Fremont never saw. In fact immediately upon the departure of Pio Pico the government house was converted into barracks, and occupied by Flores and his troops, until the surrender to the Americans; and it was during this occupation by Flores and his soldiers that the work of destruction of that portion of the archives which Pio Pico had been compelled to leave in the government house was perpetrated. They were then used for gun cartridges, or put to any other use that suggested itself (History of the War in California).

There is no discrepancy between Fremont's testimony and that of Pio Pico; on the contrary, they harmonize perfectly. Pio Pico does not speak of the after history of those papers he sent in boxes to a designated place, but only of those which had been left in the government house.

Colonel Fremont states that, while he had exclusive charge of the archives (1847), as follows: "I carried home some of them to be inspected at Washington. One I know I left there, the others were lost with other effects in the mountains of San Juan. One of these titles referred to a grant to General Castro. It was I think a title, whether the full title, or the papers concerning a grant, I am unable to say. This was lost in the mountains; there were three or four lost in the mountains. The one left at Washington referred to the Macnamara grant."

It is a historical fact that there was but one General Castro in California, and that was Jose Castro, the grantee in the present case. It is not pretended on the part of the government that there was any other grant made to General Castro.

(Pio Pico Constitutional Governor.)

Pio Pico was the Constitutional Governor of the Department of the Californias on the 4th day of April, 1846, when the grant was signed. Governor Michelterrena's authority as governor ceased, and he left the country on the 1st April, 1845. At that time Pio Pico was the first Vocal, or Senior Member of the Departmental Assembly, and became at once, by operation of law (article 138, Basis Organicus), Governor *ad interim* of the Department of the Californias, which fact was duly published by proclamation (bando), to all the inhabitants of the department. The Departmental Assembly in the exercise of a power conferred on it by the 17th sec. of art. 134 (Bases Organicas), as early afterwards as convenient proposed the name of five persons (Tema), improperly translated in

Pio Pico deposition by the word trio), heading the list with the name of Pio Pico, to the Supreme Government as permanent governor. In answer to which proposition the Supreme Government forwarded to Pio Pico a formal commission as governor, which office he filled and exercised the authority of until 11th day of August, 1846. See deposition of Pio Pico and certified copies of Spanish documents marked C.

On the 14th November, 1845, Montisdeoca, Minister of Justice and Public Instruction, addressed him as governor in an official communication from the city of Mexico, on the subject of the property of the missions. See document marked K, and certified copy of extract from the proceedings of the Departmental Assembly at the session 15th April, 1846, marked and filed in this cause, and marked (O).

It will be observed that the first deposition of Pio Pico was taken at Los Angeles, for which reason the original grant was not presented to him for inspection, as it could not be taken from the archives of the surveyor-general's office, which are kept in San Francisco. It has since been obtained and presented to the inspection of Pio Pico, and its genuineness completely established by him. See his 2d deposition.

(Loss of the Record Book Toma Razon for 1846.)

Matias Moreno, the secretary of the governor, certifies that this title was recorded in the proper book. This would have been the book (Toma Razon) for the year 1846. This book, the former existence of which is fully proved by Pio Pico, was never found after Pio Pico left Los Angeles in August, 1846. Pio Pico states, as above quoted, that, in order to preserve the archives, he had some of them put into boxes and sent to a designated place, but, for want of time, many were left in the government house. This book was, in all probability, with the latter, for it was not among those that Col. Fremont took possession of that had been deposited by Pio Pico with Don Luis Vignes, and no doubt it was destroyed, along with many other valuable documents and papers, during the occupation of the government house by the troops. It was never seen among the archives in Monterey. (See deposition of J. W. Halleck.)

(Castro's Occupation of the Land.)

In relation to the occupation by Castro, Vinsenhalos testified to Castro's going upon the land in 1849, building a house and corrals. Jose Ma Pico states that Castro was on the land in 1844, about five years previous, and, as the occupation of 1844 was only for a few months, it is probable that all traces of what was then done were destroyed or obliterated at the time Vinsenhalos saw Castro go on the land in 1849. During the years 1846, '7, and '8, Castro was too much occupied in the military affairs of California to pay much attention to lands on San Joaquin. As soon as the war was over

and peace fully established in 1849, he returned to the land, and made a regular and permanent settlement. The occupation of 1844, and which would have been immediately, without doubt, followed by a formal grant had it not been for the civil war which just about that time broke out, and in which Michelterrena and Castro occupied hostile positions towards each other, is important as showing that Castro had previously acquired some equitable rights proper to be considered by the California government at the time the grant was made under which we now claim, as well as by the government of the United States at the present day, in determining Col. Castro's rights. The locality of this grant was in the Maraposas County, and contiguous to the territory in which Fremont's grant was made to Alvarado. Both grants call for the foot of the Sierra Nevada Mountains as a beginning. The locality of this grant was equally infested with hostile Indians, and subject to their incursions, as the Fremont grant.

When Alvarado saw Castro in 1844 in Monterey, he was on his way to the head waters of the San Joaquin River with a military force, by the direction and under the appointment of Governor Michelterrena, to occupy the margins of the river San Joaquin. The military instructions which Castro bore from Michelterrena were confidentially shown to the witness Alvarado, but the military directions contained in them are not detailed by the witness; but as, at that time, the Californians had no other enemies but Indians, the inference is irresistible that the military object of his expedition was for their chastisement, and the better security of the frontier against their incursions.

Alvarado says, "in a part of them (the instructions) he, Michelterrena, promised to said Castro to grant him 11 leagues of land wherever he should locate himself with the said troops, stipulating to give him a title afterwards, in remuneration for military and civil services which he had performed for the country."

Witness states that he afterwards learned that Castro had established himself at a place on the San Joaquin River, erected houses, built corrals, and had cattle there.

Castro was afterwards compelled to withdraw the military force he had taken with him for the protection of the frontier, and temporarily leave his settlement, because the exigencies of the country required, in his judgment, his and their services at another place, for he became engaged in the civil war against Governor Michelterrena as commander of the insurgent forces, which civil war terminated in Michelterrena surrendering and capitulating to him (Castro), at or near Conenga, on the plains of San Fernando, early in the year 1845, viz., on the day of 1845.

Don Pio Pico and Col. Castro, during all this conflict, operated in concert and together and were on the most friendly terms. (See historical narrative marked P.)

These unforeseen difficulties and disputes, ending in civil war be-

tween Castro and Michelterrena, naturally failed all idea of Castro asking for obtaining from Michelterrena the promised grant for the lands he should select and had selected on the frontier; indeed it is said, and with every probability of truth, that they never spoke together from the commencement of these difficulties until after Michelterrena's surrender and capitulation, when his authority as Governor ceased, and he was virtually a prisoner and under duress up to the very moment of his leaving the country.

Wherefore Castro, at a convenient period afterwards, very naturally applies to the lawful *to the lawful* successor of Michelterrena —viz., to Governor Pio Pico—for a grant of the land so selected by him, and promised to him by Michelterrena, and accordingly obtained the grant on which this claim is founded.

Nothing can be more natural and truthlike than the whole testimony of Alvarado; first, that a man of Michelterrena's abilities should select Castro, a very distinguished and highly competent officer, to overawe the savage Indians in that portion of the republic and chastise them if necessary, and that he should promise to reward his many civil and military services to the country by a grant of land in the section of country he had protected, and, as the land was only likely to be esteemed for grazing purposes, that it should have been a grant for 11 leagues.

In the case of J. C. Fremont *v.* United States, the Supreme Court says: "The fact that the country where the land was situated was such a wilderness, and bordered by such dangerous neighbors, that no plan could then be prepared is proved by these documents; and that fact officially admitted, is worthy of consideration, when we come to the inquiry whether there was unreasonable delay in taking possession." This language is used when speaking of the Mariposas grant, which is contiguous as before said to the grant in question, and there were no difficulties or dangers which beset the occupation of the one that did not beset the other.

(Political services of Gen. Castro.)

In relation to the public services rendered his country by General Jose Castro, Alvarado says: "Since the year 1834, I think he was a member of the Territorial Deputation. He was next political chief *ad interim* of the Territory, and afterwards had different military offices up to the grade of lieutenant-colonel, till he was colonel commandant of the military forces at Monterey, and finally general commandant of the forces in California, during the war with the United States."

(Calls of the Grant.)

The claimant submits that the calls of the grant are sufficiently definite. Mr. Lewis, who made the survey of that portion of the grant which is claimed by Neleigh, states "that he found no difficulty in locating the land from such calls." It differs from the

Fremont case inasmuch as there is not only a starting-point, but a direction (Rio Abajo) to be followed by the survey. Whereas, in the Fremont case, there was only a starting-point given, and the grantee could pursue any direction he pleased; but here the grantee is expressly restricted to the downward course of the river. Mr. Lewis further says: "The conformation of the earth seemed to agree with the calls of the grant." It is submitted that this process presents a prima facie case, sufficient to warrant a confirmation, and that the question of specific boundaries is to be determined by another officer of the United States Government, who goes upon the land himself.

The language of the grant in relation to location differs from most others, and is express and pointed. In the 3d condition it is stated as follows: "The Judge, who may give possession, shall have it measured with entire observance of the ordinances, and in view of the sketch or topographical plan which the grantee shall present." There was no deseño or plot made at the time of the grant, as was customary, but the grantee himself was, at some subsequent time, to furnish one to the Judge. No doubt, if the petition could be found, it would show the same reasons for not furnishing a map at the time of the application for the land, as were set forth in the Mariposa case, viz., the almost impossibility of making one at that time, owing to the country being infested with Indians.

That the Governor had a right to dispense with the production of a deseño or map at the time of presenting the petition or issuing the grant, is fully admitted by the Supreme Court in the case of Fremont; and it may be justly inferred, that the grantee, Castro, was expected by the Governor to present a deseño to the proper officer, as soon as the state of the country would permit it to be done with safety. The plan or map now filed in this cause is made and presented, pursuant to the direction of the grant.

If it were not sufficiently proved that there was a petition for a grant in this case, that has been lost, we should insist that no petition was necessary.

The colonization law of 1824, does not require the presentation of a petition.

It is also obvious that the regulations of 1828, which required a petition, are merely directory, and not necessary to the validity of the grant.

The granting power, in the first instance, was in the Governor. He might grant as well on a verbal as upon written request or petition. No petition was necessary beyond the assent of the grantee. It constituted no part of the grant.

The word used in the second article of the regulations is "instancia," which is not properly *petition*, in the English sense. It is used in the original as equivalent to representation or statement, and was obviously intended as merely for the information of the Governor. He might act on other information without the "instancia," and was

in no respect bound by it. It was not a necessary element in the grant, nor is it so held in the "Cambuston" case. Neither does the court intend to intimate in that case that the registry of the grant is at all necessary to its validity.

It is impossible that the Supreme Court could have supposed that the neglect of the secretary or his clerk could have the effect to avoid the grant. Authority to the contrary of this is abundant, and the principle too well settled to need reference.

The district attorney refers to the fact that when Pio Pico is asked in his 2d deposition about the political history of his administration, he answers, "I do not recollect." But it appears, upon his further testimony, that he interpreted these words to mean only an unwillingness to be examined on that subject. Pio Pico explains that when he says he does not remember, he means to say "he is under the impression that he was called to depose to the character of the grant made by him as Governor, as to whether it was genuine or not, not to be catechized as to the history of his administration. That to answer such questions would be irksome and disagreeable to him; that the same information could be obtained from the history of the times, and from individuals, as was sought to be obtained from him" (we all know the peculiar notions of the Spanish race in relation to official position and honor; his dignity was offended at being asked these questions); and therefore he declined answering them, although urged in the most civil manner to do so, by the claimant's counsel himself, who was perfectly willing that every fact within the knowledge of the witness should have been stated. As claimant cannot see how a political difference between Castro and Governor Pico, in June, 1846, about a fair division of the revenues of the custom-house at Monterey, or any other national subject of political misunderstanding can possibly affect this question presented to the Court, however, it will no doubt be attempted to be shown by the district attorney, that Castro and Pico had, in 1846, political differences. The private relations between Governor Pico and Castro were always of the most friendly kind, and as Pico states, were not interrupted by any circumstance whatever, and that no political differences could have interrupted them; and that even if he had been engaged in raising a force to drive him out of the country for political differences of opinion, he would still have felt bound to issue to him a title as Governor to lands, provided they were proper to be granted, and application in the usual and proper form was made for them.

Governor Pico very properly considered that the public lands were the property of the nation, and not his private property; and that he, as Governor, was authorized and enjoined by his duty to grant them, in conformity to the laws and regulations of the nation, to any applicant who was entitled to receive them. This grant was made on the 4th April, and more than two months and a half afterwards, occurs the alleged expedition of Pio Pico against Castro, as stated by Stearns, the government witness, who states what he under-

stood, but says nothing of his own positive knowledge, so that really his testimony ought to have but little consideration. He does not tell us what became of the expedition; but I think it is well known that no blood was spilled, and that the meeting between Castro and Governor Pico terminated in the most friendly manner. Stearns, the government witness himself, says, "that he does not think that this political difference between Pico and Castro made any difference in their private friendly relations. It might possibly have done so, but he never heard that it did."

The allegation contained in the district attorney's Brief, I understand it will be urged by the district attorney, that Castro claimed and exercised the powers of Governor, is totally unsupported by any proof, and is an entire misrepresentation of the facts of the case, which are simply these.

(Tornel document, 10th March, 1846.)

That late in July of that year, 1846, nearly four months after the execution of this title, Castro received authority from the home government at Mexico, to sell lands, not as Governor, but as military chief, in order to raise money to defend the country against the Americans; and in a sale made under this authority by Castro to Nicholas Merchan, and the claim under which is now being prosecuted before this Court (No. 225), all of these facts are fully set forth. Castro did not pretend, in any manner whatever, to interfere with, or to supersede the ordinary or lawful powers of, the Governor.

It is mentioned in the district attorney's brief that "the Indians could not in this case, as in Fremont case, have presented any difficulties to the making out, and presenting a map, together with the petition when applying for the land, because by the testimony of A. Ma Pico, Castro had a temporary occupation of the land in 1844." It is true he had an occupation in 1844, but it was one that had to be protected by a considerable body of troops, from Indian hostility. The exigencies of the State soon afterwards required these troops to be withdrawn for some other service, when Castro left, being compelled to await some more favorable opportunity of occupying and surveying the lands he had selected under his understanding with Michelterrena, as set forth in the testimony of Alvarado. In fact, as has been stated before, there are no equities in the Fremont case, arising from the frontier and defenceless position of the land, and the presence of hostile and savage Indians upon the same that are not strictly applicable to this case, as they are contiguous tracts of country and similarly situated in every respect, and, therefore, in this case it was very properly decided by the grant itself, that the grantee should at some *future* time present a map of the land.

Fremont had presented no deseño even at the time of the final confirmation of his claim by the Supreme Court, and under its decision might have had his claim run off in almost any imaginable shape, and to the great injury of the public domain; but in the pre-

sent case a regular deseño, liberal and fair in its character, made under the directions and restrictions of the grant, was presented at the first filing of the claim before the land commissioners, and is part of the record in this case, which circumstance renders the reasoning of the United States District Attorney upon this part of the question entirely inapplicable, as the real facts of the case are different from those from which he draws his conclusions.

(Distribution between this and the Cambuston Case.)

The Supreme Court of the United States urge as an objection to offering the decision of the District Court in the Cambuston case, "that the original grant was not produced either before the commissioners or the District Court, and the only proof of its genuineness was the testimony of two witnesses who had seen the signatures of Governor Pio Pico and the secretrry Moreno, on file in the Surveyor-General's office."

Now, in the case at bar, the grant itself is presented to the District Court for its full examination and inspection, and the genuineness of the grant is established by the direct testimony of five highly respectable witnesses, including the granting Governor himself.

The court further say in that case, that the regulations for the colonization of the territories of the Government of Mexico, made the 21st November, 1828, in pursuance of the act of the General Congress, August 18th, 1824, must be substantially complied with, that is that there should have been a petition accompanied by a map presented to the Governor, a reference by him to the proper officer, and a favorable report made upon the same, &c., in fact all the papers and documents necessary to a complete expediente. Now I take this to mean that these documents, viz., the petition, &c., must be either produced with the grant itself before the tribunals which are to decide upon the merits of the claim, or their absence must be accounted for.

It certainly in a court of equity can mean nothing else. Now in this case the granting Governor, Pio Pico, says that he never made, as he thinks, any grant except upon petition presented to him. Nor is there any proof that he ever did so. There may be grants made by him which have been presented to the courts unaccompanied by a petition, as in this Cambuston case; but that is no proof that there was not originally a petition, and that upon that petition and other proceedings, the grant was issued.

Col. Fremont, who has no personal acquaintance with the claimants in this case, and who, I am certain, never heard of this cause, and is totally ignorant of its existence to this very day, in giving his testimony in a totally different case, viz., the case of Morehead's Adm'r *v.* United States, in the Northern District of California, as to what he knew of the history of the archives relating to land titles in California, says, "that after he had taken possession of that portion of the archives which Pio Pico had deposited with Don Luis

Vignes, in Los Angeles" (because Pio Pico only sent a portion of the archives to Don Luis Vignes for safe keeping, and the balance, for the want of time, were left in the government house. (See Pio Pico's first deposition.) Those that were left in the government house Fremont never saw, as they were pretty much destroyed before he reached Los Angeles), he goes on to say that they (that is, those taken from the possession of Don Luis Vignes), "were exclusively in my charge, and I carried home some of them to be inspected at Washington. One I know I left there, the others were lost, with other effects, in the mountains of San Juan. One of these titles referred to a grant to General Castro. It was I think a title, whether the full title or the papers concerning the grant, I am unable to say."

It is a historical fact that there was in California but one Col., afterwards General Castro, and he was the grantee in this claim. Larkin, in his testimony, states that he had been the American Consul at Monterey, and had been a long time in the country, and never knew or heard of any other General Castro but the grantee in this claim. It seems that a fair and just and almost irresistible inference, that the papers lost by Fremont, in the San Juan Mountains, were the missing portion of the expediente in this case. As to that portion of the archives which Pio Pico left in the government house in his haste to leave Los Angeles, the manner in which they were destroyed and scattered is fully set forth in the 1st deposition of Pio Pico, in the deposits. of Dr. Ord, Gillespie, and Col. Stevenson, and the general notoriety of their loss and destruction.

The keeper of the archives in the Surveyor General's office of California certified that no paper belonging to the expediente in this case is among the archives in said office except the grant itself. See certificate marked "L." So the papers are not there.

In the Cambuston case the court object that there was no map or deseño. In this respect the grant before the court, and the Cambuston grant, have a most marked distinction. The Cambuston grant is in the ordinary form, and, therefore, according to the regulations of Nov'r, 1828, there should have been presented to the governor, at the time of applying for the land, a map or deseño, but in the grant before the court the present presentation of a deseño is directly dispensed with, and the grantee is expressly directed to furnish a deseño at some future time to the judge who was to give him juridical possession of it.

The Supreme Court decided, in the Fremont case, that the governor had a right thus to dispense with the presentation of a map or deseño at the time of applying for a grant of land, directing the grantee to furnish it at some future time; and whatever indulgence was shown to the grantee of the Mariposa claim might reasonably and very naturally be extended to the grantee of the lands covered by this claim, as the two trusts were contiguous, and equally infested by savage tribes of Indians.

In the Cambuston case the Supreme Court seem to think that it was not sufficiently shown that Pio Pico had been recognized by the government of Mexico as the Governor of California. In the present case I think it very fully established that he was the lawful and constitutional Governor of the Department of the Californias from some time in March, 1845, to some time in August, 1846. See 1st deposition of Pio Pico, article 138, Bases Organicas, certified copies of documents marked and certified copy of original documents on file in the department of the "Ministerio de Gobernacion en la Republica Mexicana" in the city of Mexico, showing the appointment by the Mexican Government of Pio Pico as Governor, and approving his acts as Governor *ad interim*, marked "M," and certified copy of an extract from the proceedings of the Departmental Assembly of California at its session on the 15th of April, 1846, marked (O), all of which are on file in this cause.

The Supreme Court in the Cambuston case further object, that on the trial of that cause "the (Record Book of Toma Razon) should have been produced, or its non-production reasonably accounted for."

In the present case Matias Moreno, the Secretary of the Governor, certifies that this title was recorded in the proper book; the signature of Moreno is proved by several witnesses to be genuine. In relation to the book itself Pio Pico states positively in his 1st deposition that when he left Los Angeles, in August, 1846, it was among the archives in the Government House at Los Angeles. The manner in which the books papers that were left in the Government House by Pio Pico were scattered and destroyed has been referred to above, when speaking of the depositions of Pio Pico, Gillespie, Dr. Ord, and Col. Stevenson. No doubt this book was destroyed, at least it is reasonable to infer so, along with many other valuable documents and papers during the occupation of the Goverment House by the troops. J. W. Halleck, who, from an early time in the history of the American possession of California, had charge of the archives relating to said titles which had been collected at Monterey, certifies (see copy of deposition in the Morehead's Adm'r Case) that it was never seen among the archives in Monterey.

The claimant submits that under this state of facts the non-production of the book of Toma Razon, or record book, is sufficiently accounted for.

He further submits, that under the foregoing statement that the objections set forth by the Supreme Court of the United States to the confirmation of the Cambuston case are totally inapplicable and irrelevant when applied to the case before the court.

FRED'K A. SAWYER, for Claimant.

Authorities.

U. STATES vs. P. B. READING. } 18 Howard, page, as to the effect of recitals of the grant.

SAME vs. SUTTER. } 21 Howard. Same point. Informe dispensed with.

10 Peters, page 13, as to recitals.

U. STATES vs. VACA. } 18 Howard, p. 550 and 553, as to excuse of map and survey, &c.

SAME vs. SOUTHERLAND. } 19 Howard, p. 363, as to boundary.

SAME vs. T. O. LARKIN. } 19 Howard, 557, as to services rendered being good consideration for grant.

District Court of the United States, Southern District of California.

THE UNITED STATES, Appellants, vs. ROBERT B. NELEIGH, Appellee. } Term, 1858.

This cause coming on this day to be heard on appeal from the final decision of the commissioners, to ascertain and settle land claims in the State of California, under the act of Congress approved 3d March, 1851, upon the transcript and proceedings and decision of the said board and upon the further evidence taken before this court by order of the court, and counsel for the respective parties having appeared, in consideration of all which the court is of opinion that there is no error in the decision of the said Board of Commissioners, and that the same should be and the same is hereby affirmed.

And the court doth order, adjudge, and decree, that the title of said claimant to the land described in said transcript is valid, and the same is hereby confirmed to the extent and quantity of six leagues.

The land of which confirmation is hereby made, contains six square leagues embraced in a grant issued by Governor Pio Pico on the fourth day of April, 1846, to José Castro, and described in said grant as commencing at the foot or base of the Snowy Mountains on the San Joaquin River, and running down said river, to be selected by the said claimant from the said eleven leagues named in said grant when the same shall be located by the proper authority, reference being had to the said grant.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the S. Dist. of Cala.

(Endorsed): Filed in office this 6th day of Oct., A. D. 1859.
C. SIMS, Cl'k.

U. S. Dist. Court, Southern Dist. of California.

THE UNITED STATES
vs.
ROBERT B. NELEIGH. } No. 331.

Now comes J. R. Gitchell, U. S. Dist. att'y for the Southern Dist. of California, and moves the court for leave to take appeal in the above entitled case.

J. R. GITCHELL,
U. S. Dist. Att'y.

Filed in office the 7th Dec'r, 1859.

C. SIMS, Cl'k.

(Deposition of Jose Castro.)

United States of America, State of California, *ss.*

San Francisco, Jan'y 11, 1855.

This day came before Peter Lott, commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, Jose Castro, a witness on behalf of the claimant Henry D. McCabb, in case No. 170 on the docket of said board, and said witness being sworn, deposed in Spanish, which is interpreted by the interpreter to said board as follows. The U. S. law agent is present.

Questions by Mr. Williams, for claimant.

1st question. What is your name, age, and residence?

Answer. My name is Jose Castro; my age 46 years; my residence in Monterey, California.

2 question. Are you acquainted with the rancho called Corral de Sierra in Monterey County? if yea, state its location and boundaries so far as you know them, and the quantity of land contained in said rancho, and how long you have known it.

Answer. I know said rancho; I have known the land about 40 years. It is situated in Monterey County, about 4½ leagues in a southerly direction from the city of Monterey. According to my understanding of the place it contains about one sitio de ganada mayor. It is bounded on the south by vacant lands, on the north by lands of Estevan Munras and Jose Ramon Estrada, and on the northeast a small piece of Francisco Mesa. The west is also bounded by lands of Munras. I understand that a ridge of mountains forms the eastern and southern boundary.

3d question. Look at the document now shown to you, marked exhibit 1, as an exhibit to this deposition, and state whether you are acquainted with the rubric of Nicolas Gutierrez and Angel Ramirez, and with the signature of said Nicolas Gutierrez and Francisco del Castillo Negrate, Francisco Figaroa, Guadalupe Figaroa, and Ignacio del Valle. If yea, state whether their respective signatures and rubrics in said document are genuine, and your means of knowledge.

Answer. I know all the rubrics and signatures of the persons named, excepting that of Guadalupe Figaroa; I have seen them all

write excepting her, and as to her signature I cannot testify. The others are all genuine as they are respectively made and signed in this document.

4 question. State what you know of the occupation and cultivation of said rancho by Francisco Figueroa.

Answer. In 1834, when Jose Figueroa was Governor, he gave notice to the people and authorities at Monterey, that he was going to settle on this land. He did so. He built a house there, planted a vineyard, and took his horses on to the place. Not long after that he died, and left this land to Guadalupe Figueroa, the daughter of Jose's brother, Francisco Figueroa; after that Francisco, the father of Guadalupe, applied to Governor Gutierrez for a grant of said land to his said daughter Guadalupe, which grant was obtained.

In 1836 or 1837 I was passing by the place, and Francisco Figueroa was there with his family on two occasions when I was passing. I do not know whether they lived there, but he was engaged in conducting the business of the vineyard. Shortly after that said Francisco moved down to Los Angeles and left a man in charge of said place; that man remained on the place in charge of it some four years, and cultivated it in a variety of products. There was a variety of fruit-trees on the place besides the vineyard, and he planted corn, melons, and other vegetables.

5 Question. Look at the document now shown you, marked Exhibit 2, as an exhibit to this deposition, and state whether you are acquainted with the signature of José de Arnoz therein written, and what are your means of knowledge, and state whether said signature in said document is genuine.

Answer. I know the signature of said Arnoz. I have never seen him write, but I have often seen his signature and had it in my possession, and I believe this to be his genuine signature.

6 Question. Look at the document now shown to you, marked Exhibit 3, to this deposition, and state whether you are acquainted with the handwriting of Nicolas Morchon; if yea, state your means of knowledge and also state whether his signature, as it appears in said document, is genuine.

Answer. I know said Morchin's handwriting. I have never seen him write, but I have received communications from him and know his signature, and I believe this to be his genuine signature.

Cross-examined by U. S. Law Agent.

1 Question. Are you or have you ever been a surveyor by profession? If nay, how does it happen that you know the boundaries of so many ranchos.

Answer. I have never been a surveyor, but my former position in public business brought to my knowledge much information upon those subjects. Beside being political chief myself and having made grants, I have been cognizant of those made by other governors, and my friends have, in many instances, showed me and told me of

grants they have received, and my general knowledge of the country and the people has enabled me to learn many of the boundaries of different ranchos.

2 Question. Did you obtain your knowledge of the boundaries of the rancho claimed in this case from seeing the grant?

Answer. I only know them by having been told them by Francisco Figueroa the grantor.

3 Question. When and where did he describe said boundaries to you?

Answer. Shortly after Gutierrez granted this land to Francisco Figueroa's daughter, he, Francisco, gave a breakfast at his house, to which he invited me, and Governor Gutierrez, and others. Don Francisco, on that occasion, expressed his thanks to the Governor for having done so great a favor as to grant this land to his daughter. The Governor kindly told him he would be pleased to do him a much greater favor if there was any way in which he could serve him. Don Francisco, in course of conversation, described to me the plan granted. He said it was "one sitio de ganado mayor," and told me who were his colindantes, and many other things were said about the subject.

4 Question. When and where did you last see each person write of those you have thus herein testified of, and what instrument was each writing when you saw him write?

Answer. The last time I saw Nicolas Gutierrez make his rubric and write, was in 1836, in Monterey, when he gave me an order to the administrator of the custom-house, Don Angel Ramirez; this was about the month of October, and on the same day said Ramirez gave me an order on a merchant in Monterey for $500; the merchant's name was Manuel Crespo. I saw Ramirez write the order. I saw Francisco del Castillo Nigrate write last some time in 1835, when he was my secretary; he was writing a power of attorney given by him to Estaban Munras to collect some debts. I last saw Francisco Figueroa write in 1835, at Monterey; he was signing some document in a judicial proceeding against some soldiers who had robbed the custom-house. The last time I saw Ignacio del Valle write was in my house at Monterey, about January or February, 1846; he was writing an official communication to me as commanding general, by the order of Pio Pico, to deliver to said Valle the commissariat. This is according to my best recollection.

5 Question. Was this transaction with del Valle had before or after your reconciliation with Pio Pico?

Answer. It was before.

6 Question. Did you obey orders from said Pico before that reconciliation?

Answer. I did not. There was no authority here superior to my own, excepting that of the Supreme Government.

7 Question. Was that transaction with del Valle before or after Pico made the grants of the various missions in California?

Answer. I do not know when Pico made those grants.

8 Question. What induced the reconciliation between you and Pico?

Answer. I was chief in command, and he had some hundreds of men whom I wanted to strengthen my army, and I publicly embraced him and got his men. I, however, only had them about four hours, for he seduced them all away from me again.

Re-examined by Claimants' Counsel, Mr Williams.

1 Question. Have you seen the rancho in question since 1836, at different times? If yea, state what you know of the continued occupation thereof.

Answer. I have passed by there some ten or twelve times since then, and I always have the cultivation there, and horses, and people about the place, but I do not know who they were.

JOSE CASTRO.

Subscribed and sworn to before me on this 11th day of January, A. D. 1855. PETER LOTT, Commissioner.

Filed in office, January 15, 1855. GEO. FISHER, Sec.

United States of America, Southern District of California.

State of California, County of Los Angeles.

I, C. Sims, Clerk of the United States District Court for the Southern District of California, do hereby certify that the preceding pages, numbered from 1 to 7, both inclusive, contain a full, true, and correct copy of the deposition of José Castro in the Case No. 359, on the docket of said court, wherein H. D. McCobb is claimant contra the United States, as appears of record on file in my office.

In witness whereof I hereunto set my hand and affix the seal of said court this the 17th day of June, 1859.

[SEAL.] C. SIMS, Clerk.

(Deposition of David Spence.)

Office of the Board of Commissioners, &c.

This day, before Com'r R. Aug. Thompson, came David Spence, a witness on behalf of claimant, Richard S. Den, No. 621, who, after being duly sworn, deposed as follows:—

Q. 1. What is your name, age, and place of residence, and long have you resided in California?

A. 1. My name is David Spence; my age is fifty-five; I reside at Monterey, in California, and have resided in California for the last twenty-nine years.

Q. 2. What offices have you held under the Mexican Government in California, and what time did you hold such offices?

A. 2. I was Alcalde in 1835 at Monterey. In 1836 I was a member of the Territorial Deputation, Justice of the Peace at Monterey in 1839 and 1840, and member of the Departmental

Assembly under the administration of Gov. Michelterreno, continuing up to and under the administration of Pio Pico, although I did not assist in session under Pico's administration owing to ill health.

Q. 3. Will you state if you know what was the financial condition of the Government of California in the years 1845 and 1846, previous to the occupation by the United States army?

Ans. 3. I believe after Michetorena left in the spring of 1845, they depended upon the revenues of the custom-house at Monterey to support the government. Previous to the hoisting of the United States flag in 1846 hostilities existed between Gen'l Castro, who resided at Monterey, and Gov. Pio Pico, who resided at Los Angeles, and during this time Castro had the control of the custom-house at Monterey, he being in a state of revolt against the authority of the Governor.

Quest. 4. Do you know of Gov. Pio Pico having any other resources to support the Government of California during 1845 and 1846?

Ans. 4. I am not aware of any other. D. SPENCE.

Sworn to and subscribed before me, Nov. 5th, 1853.

R. ANG. THOMPSON, Com'r.

Filed in office Nov. 5, 1853.

(Signed) GEO. FISHER, Sec'y.

United States of America, Southern District of California.

State of California, County of Los Angeles.

I, C. Sims, Clerk of the United States District Court for the Southern District of California, do hereby certify that the two preceding pages hereunto attached contain a full, true, and correct copy of the *of the* depositions of D. Spence, on the 17th page of the transcript of the proceedings of the late Board of United States Board of Land Commissioners on file in my office in the case No. 338, wherein Richard L. Dean is claimant contra the United States, as appears of record on file in my office.

In witness whereof I hereunto set my hand and affix the seal of said court this the 17th day of June, 1859.

[SEAL.] C. SIMS, Clerk.

United States District Court for the Southern District of California.

Monday, December 6th, 1858.

ROB'T B. NELEIGH, App'ee,
vs.
THE U. STATES, Appl't. } No. 331.

This cause, by consent of counsel, is set down for trial on to-morrow at 11 o'clock A. M.

Tuesday, Dec'r 7th, 1858.

BOB'T B. NELEIGH, App'ee,
vs.
U. STATES, App'lt. } No. 331.

And now comes the parties by their att'ys aforesaid, and by stipulation filed, this cause is submitted to the court for final adjudication upon the papers in the case and on briefs, and the same is taken under advisement by the court.

Thursday, the 23d Dec'r, 1858.

THE U. STATES, Appl'ts,
vs.
R. B. NELEIGH, App'ee. } No. 331.

It is stipulated by and between the parties that this cause shall rest and stand without decision or decree until the June term of this court, to be held in Monterey, 1859, when the same shall be re-argued before the court.

Monday, June 13th, 1859.

ROB'T B. NELEIGH et al.
vs.
THE UNITED STATES. } No. 331.

By consent of parties, this cause is set down for to-morrow.

Tuesday, June 14, 1859.

No. 331.

This case, by consent of counsel for the respective parties, was continued till to-morrow.

Friday, June 17th, 1859.

R. B. NELEIGH, App'ee,
vs.
THE UNITED STATES, Appl'ts. } No. 331.

Now on this day comes the parties aforesaid, by their respective attorneys, and, after argument of counsel, the same is submitted to, and taken under consideration by, the court.

Thursday, 6th October, 1859.

ROB'T B. NELEIGH
vs.
THE UNITED STATES. } No. 331.

Now on this day the court delivers its decision in the above case, confirming the claim of claimant, and a decree was ordered to be entered in accordance therewith, which is accordingly done.

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Office of the United States District Clerk
for the Southern District of California.

United States of America,
Southern District of California, County of Los Angeles.

I, C. Sims, Clerk of the United States District Court for the Southern District of California, do hereby certify that the first foregoing sixty (60) pages, numbering from one to sixty, both inclusive, contain a full, true, and correct transcript of the record of the proceedings and of the decision of the late Board of United States Land Commissioners to "settle private land claims in the State of California;" of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, as appears from the transcript of the record of the proceedings of the said board, on file in my office, in case No. 331 on the docket of the said United States District Court, wherein Robert B. Neleigh is claimant against the United States. And I do further certify that the next succeeding one hundred (141) one pages, numbered from sixty-one (61) to two hundred and one (201), both inclusive, contain a full, true, and correct transcript of the record of the proceedings and of the decision of the United States District Court for the Southern District of California; of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, as appears of record on file in my office in the said case No. 331 on the docket of said court, wherein the said Robert B. Neleigh is claimant against the United States for the place known by the name of "Lands on the San Joaquin River."

In witness whereof I hereunto set my hand, and affix the seal of said court, this the 6th day of January, A. D. 1860.

[SEAL.] C. SIMS, Clerk.

SUPREME COURT OF THE UNITED STATES.

No. 117.

THE UNITED STATES, APPELLANTS,

vs.

ROBERT B. NELEIGH.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

This is a claim for six square leagues of land in California, being part of a tract of eleven leagues alleged to have been granted by Governor Pio Pico to General José Castro on the 4th of April, 1846.

The United States allege that no such grant was made at that time.

I. There is no espediente, note, or other record of this grant in the Mexican archives, and the case rests upon a naked paper produced from the pocket of the claimant in 1849. This objection is fatal.

II. The grant bears internal evidence that it is fraudulent and antedated.

III. This particular title has been adjudged bad by the Supreme Court in the case of United States *vs.* José Castro, 24 How., p. —.

EDWARD BATES,
Attorney General.

J. S. BLACK,
J. F. SHUNK,
Assistant Counsel.

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SUPREME COURT OF THE UNITED STATES.

No. 117.—December Term, 1861.

ROBERT B. NELEIGH, APPELLEE,

ads.

THE UNITED STATES.

Appeal from the District Court for the southern district of California, in a Land Case which had been confirmed by the Land Commission and by that Court.

The petition to the land commission claims the confirmation of six sitios, part of a grant of eleven leagues, made on the 4th of April, 1846, by Pio Pico, governor of California, to José Castro, the land lying on the San Joaquin river, commencing at the edge of the Snowy mountains, and extending down stream.

It states that Castro, on the 8th of June, 1849, conveyed to petitioner and McKenzie six leagues, with the choice of location within the eleven league grant, and that McKenzie's widow under a will, he being dead, conveyed his interest to petitioner.

Facts in the case shown in the Record.

1. That José Castro was a leading military officer in California, under the government of Mexico. In 1844, Micheltorena, governor of California, appointed Castro to occupy the margin of the San Joaquin with troops, and promised to grant him eleven leauges of land, wherever he should there locate himself. That Castro took horses and cattle to the place in question, and built houses and corrals. That he left there pursuant to the calls of duty, and in consequence of the political disturbances then agitating the country.

Geo. S. Gideon, printer, 511 Ninth street, Washington.

Alvarado's Ev., R., pp. 10, 11: "In 1844 José Castro was appointed by Micheltorena to go with some troops, and occupy the margin of the river San Joaquin. This took place during the last six months of the year.

"José Castro passed my rancho, near Monterey, being on his way for this purpose, and he confidentially showed me his military instructions, which he had from Micheltorena.

"In a part thereof, he promised to said Castro to grant to him eleven leagues of land, wherever he should locate himself with the said troops, stipulating a title afterwards, in remuneration for the military and civil services which he had performed to the country. I afterwards learned that Castro had established himself at a place on the river San Joaquin, erected houses, built corrals, and had cattle there, and that soon after he retired from thence, by order of Micheltorena, leaving the place. This was in consequence of some political disturbances which occurred in the department.

"He (Castro) was on the ranch San Joaquin in 1544; in the latter part of that year he was ordered by Micheltorena to evacuate that part of the country, and he went wherever his command was ordered. His family was in Monterey. He was moving about with the army."

Antonio Maria Pico's Ev., R., p. 9: "I know the rancho of the river San Joaquin spoken of. It is on the river San Joaquin, where the said river runs out of the Sierra Nevada, on the margin of the same. I was there in 1844, and José Castro, the general, told me the boundaries.

"I was on the place in 1844, and Castro had on it a house, which he occupied himself, with his servants; he had cattle and horses. I know of four hundred head of cattle he had there, which I sent him from San José. He also had corrals on the land."

This was after the grant by the same governor to Alvarado, (Fremont's,) upon which he made no settlement, nor did anything towards keeping the Indians in check.

2. Pio Pico, as senior member of the departmental assembly, became acting governor on the 11th of February, 1845, when Micheltorena abdicated his office, and acted as such until the day of May, when he was appointed governor by the supreme government of Mexico, in which capacity he served until the 11th of August, 1846.

Pio Pico's Ev., R., p. 37: "I have occupied the situation of constitutional governor in the years 1845 and 1846, up to August in the latter year.

"I became governor in accordance with the laws. I was one of the trio submitted by the legislative body of California to the Supreme Mexican government, from which I received my appointment, and entered upon the discharge of my duties as constitu-

tional governor, by virtue of a communication from the secretary of state of the Mexican government.

"It (the abandonment of Micheltoreno) was in the beginning of the year 1845; it might have been about February; I was at that time first vocal of the departmental assembly. I was named as one of the trio by the assembly, during the same year 1845; but do not remember the month exactly; if I do not mistake, it was in the month of May, 1845, that I received my appointment as governor from Mexico."

Resolutions of the departmental assembly, R., p. 75, 76, confirm this statement.

3. The signature of Pio Pico to the grant is fully proved.

Den's Ev., R., p. 51: "I am acquainted with him (Pio Pico) since 1843; and have seen him write, and know his signature.

"To the best of my knowledge and belief, it (his signature to the grant) is genuine; I believe it to be genuine."

Stevenson's Ev., R., p. 51: "I am acquainted with his (Pio Pico's) signature. I believe it (the signature to the grant) to be the genuine signature of Pio Pico, late Mexican governor of California."

Shore's Ev., R., p. 57: "I am acquainted with Pio Pico's signature. I became acqainted with his handwriting by seeing him write frequently, and receiving letters from him.

"I believe that (the signature to the grant) to be his genuine signature; I have examined hundreds of his signatures in the Spanish archives in the surveyor general's office, and believe this to be genuine. I believe it (the grant) to be an original title or grant for eleven square leagues of land on the banks of the San Joaquin river, made by Governor Pio Pico to Lieut. Col. José Castro, dated the 4th day of May, 1846."

Warner's Ev., R. p. 6: "I have examined the said paper (the grant) this morning in the office of the surveyor general. I am acquainted with the signatures of the signers (Pio Pico, Mortino Moreno, and H. W. Halleck) to the document, and have seen them write, and believe them to be their genuine signatures."

Moreno's Ev., R. p. 66: "The signature of Pio Pico, (to the grant,) I recognize as his genuine signature, and have seen him write and know his writing."

Pio Pico's Ev., R., p. 63: "I believe it (the grant) was signed by me as governor, on the day on which it bears date, to wit, the 4th day of April, 1846."

4. Moreno's signature to the grant was genuine.

Warner's Ev., R., p. 6: "I am acquainted with the signatures of the signers (Moreno and others) of the document, and have seen them write, and believe them to be their genuine signatures."

Den's Ev., R., p. 51: "I have seen him (Moreno) write and sign his name. I believe it (the signature to the grant) to be genuine."

Moreno's Ev., R., p. 66: "My signature (to the grant) is also genuine."

5. Pio Pico signed the grant the day of its date, and Moreno about a month later, but before its delivery.

Pio Pico's Ev., R., p. 63: "I believe it was signed by me as governor on the day on which it bears date, to wit, the 4th day of April, 1846.

Moreno's Ev., R., p. 63: "I do not remember exactly the date, (of his signing the grant,) but it was in the beginning of May; I think it was between the first and fourth of May."

6. The grant is in the handwriting of Francisco Lopez, now deceased, a clerk in the secretary's office, and delivered to Castro's agent.

Pio Pico's Ev., R., p. 63: "I think it (the grant) to be the writing of Francisco Lopez, a youth and clerk in the office of the secretary, who has since died here in the county of Los Angeles."

Moreno's Ev., R., p. 67: "The govenor took the title, and delivered the same to the agent of the interested party; but I think, sometime in the month of May."

7. Pio Pico never made grants without first receiving a petition from the applicant.

Pio Pico's Ev., R., p. 38: "Question. Did you ever make a grant without a petition for the land being first presented to you?

"Answer. I believe that I did not."

8. There is evidence of a petition having been presented and inquiry made before the making the grant.

Recital in the Grant, R., p. 21: "Whereas the lieutenant colonel of cavalry, Don Jose Castro, Mexican citizen, has petitioned, for the benefit of himself and family, for a tract of land for pasturing cattle on the banks of the river San Joaquin, consisting of eleven leagues, whose measurement is to be commenced from the edge of the Snowy mountains, following down stream. Having previously made the necessary investigations, I have, by decree of this day, granted to the said Senor," &c.

Fremont's Ev., R., p. 48: He describes his gathering up and sending off the books and papers of the archives, and having some of them in the mountains of San Juan, and adds: "One of these titles referred to a grant to General Castro. It was, I think, a title, whether the full title, or the papers concerning a grant, I am unable to say."

The papers referred to were doubtless those usually called esunt

pediente, which includes the petition, and reference, and report, where the governor did not act from personal knowledge, and order to make out a grant, as he probably did in this case, as he knew the country was unsettled, and the character, standing, and the services of the applicant.

9. There were books and records belonging to the California archives, when the Americans took possession, which were lost and destroyed.

Pio Pico's Ev., R., p. 38: "Question. Was there a book of records kept in the year 1846, in which the grants of land made by you were recorded?

"Answer. There was.

"Question. Do you know where that book is? If not, where was it when you last saw it?

"Answer. I do not know. The last time I saw it was in the office of the secretary of the departmental government.

"Question. Were the petitions for land and other public papers kept in the same office?

"Answer. They were.

"Question. What became of the books and papers and the documents of that office?

"Answer. Under my direction and supervision they were packed in boxes, a portion of which said boxes were removed from the office to a designated place; the remainder of the boxes, from the want of time and convenience, were left remaining in the executive buildings. On my return to the country in 1848, I learned, and was informed, and it was a matter of public notoriety, that not only the documents before referred to, but many of those of the municipal government of Los Angeles, had been scattered about, lost, and destroyed—that they had been even used as paper for making gun cartridges; from the destruction of which documents I myself have suffered heavy pecuniary loss, as documents in which I, as a citizen of California, was deeply interested pecuniarily, and which were in the office, have never been recovered."

Gillespie's Ev., R., p. 46: "On his first trip south, after the beginning of the war in 1846, Col. Fremont reached Los Angeles in the month of August of that year, and at once seized the archives, as I learned on my arrival there, which was on the last day of that month. The archives were then placed in my possession, and I retained them until the eighth of September, when Col. Fremont carried them north, and, as I understood, to Sutter's fort."

Fremont's Ev., R., pp. 47, 48: "About August 14, 1846, I received an order from Com. Stockton, then at Los Angeles, directing me to take charge of the public archives, which were then in the possession of Don Luis Vignes, an old resident of Los Angeles, in whose charge they had been placed, as I understood, by Pio Pico.

I took possession of them accordingly, and retained them in my possession until about the end of September, when I placed them at what was then called Sutter's fort, on the American river.

"They made together about two mule loads, and I transported them in that way from Los Angeles to Sutter's fort."

He states, that, by order of Gen. Kearney, in March, 1847, he delivered them up, "and consigned them directly, I think, to the care of Willard P. Hall, at Monterey. They were kept in Mr. Larkin's house, where I saw them about the 13th of May, 1847.

"I was aware of the value of these archives, and took precautions to have them protected. They were packed in bales, and covered with blankets, so as to be secure from loss. *A part of them were subsequently lost.* I carried home some of them, to be inspected at Washington. One, I know, I left there. The others were *lost*, with other effects, in the mountains of San Juan. *One of these titles referred to the grant of Gen. Castro. It was, I think, a title; whether the full title, or the papers concerning a grant, I am unable to say. This was lost in the mountains.* There were three or four lost in the mountains. The one left at Washington referred to the McNamarra grant. The archives I allude to were those found at Los Angeles. I know nothing of any at Monterey, or at any other point than Los Angeles. When I last saw them, they were at Mr. Larkin's private residence, or in a room adjoining a store, above which he resided." There is no evidence in the record that any other grant was ever made to Castro in California.

H. W. Halleck's Ev., R., p. 45: He says he had possession of the archives in 1847, and he and Hartnell found grants not entered upon any book, and adds:

"Affiant further says, that neither at the time of his taking possession of the archives, nor at any time since, has he ever discovered any record book or index of grants made in the year 1846, nor has he ever heard of the discovery of any such book or index, save and except those made by affiant and the said Hartnell."

10. The grant was entered in the proper book. The grant has entered on it—"Record has been taken of this superior patent in the respective book."

Moreno's Ev., R., pp. 66, 67: "There was a book, called 'Toma Razon,' for the year 1846; and when a grant was made of any portion of land, an annotation was made in that book, stating the names of the parties for whom the grant was made, and also the number of leagues of land granted, and then this annotation was signed with the rubric of the secretary.

"It was not only my practice, but it was my duty, to make an entry of all the grants made in my office, or coming from my office."

He states, that Mac Covorubious was secretary when this grat

bears date, but had not signed it. He was absent, and he, Moreno, took his place, and acted as secretary, and signed this and other grants previously made out.

11. The grant was capable of location from its own description of the land.

Lewis's Ev., R., p. 7: "I found no difficulty in locating the land by the calls of the title, as appeared in the certified copy which I had.

"As soon as I examined the title, I knew that that was the ground where it was located. I could have located the land by the calls of the patent without the information given by Vensonhaler."

12. Possession was taken of the land granted in 1849, and as soon as circumstances would permit.

Vensonhaler's Ev., R., p. 5: "Castro took possession in the latter part of August or September, 1849, and built a corral, and had cattle there in the early part of the year 1850. I was at the place in October, 1849, and found the place occupied as before stated. It has been occupied by him and those claiming under him ever since. At the time of taking possession of the land in 1849, the nearest settlement was at Mariposa town, 40 miles distant, and it would have been unsafe, in consequence of the liability of the wild Indians, to have attempted to occupy it earlier."

POINTS.

FIRST. *Recitals in a grant by a public officer are prima facie evidence of the fact recited, when they relate to the subject-matter of the grant.*

A Mexican grant, like a United States patent, a sheriff's, master's, or receiver's deed, which should contain nothing but a granting clause, would be a nullity. Each must set out facts enough to show the right of the officer to make the grant. These recitals have always been treated as prima facie correct. It is presumed that the officer performs his duty, and states matters truly, until the contrary is proved. Neither he nor the party claiming under his acts, are called upon to give evidence in support of his recitals, until this presumption is overcome by adverse proof.

The recitals in a commission, in writs issued by judicial officers, and in the journals of legislative bodies, are also taken as prima facie correct.

This rule is applicable to the statements of all public officers, when acting within the scope of their public duties.

This court, in *Fremont's* case, treated the recitals in the Alvarado grant as true and important. The CHIEF JUSTICE said:

"But the grant, after *reciting* that Alvarado was worthy, for his patriotic services, to be preferred in his pretensions for his personal benefit and that of his family, for the tract of land known by the name of Mariposas, to the extent of ten square leagues, within certain limits mentioned in the grant, and that the necessary requirements, according to the *provisions of the laws and regulations*, had been previously complied with, proceeds, in the name of the Mexican nation, to grant him the aforesaid tract, declaring the same, by that instrument, to be his property in fee, subject to the approbation of the departmental assembly, and the conditions annexed to the grant. (17 How., 558.)

"And the grant was not made merely to carry out the colonization policy of the Government, but in consideration of the previous public and patriotic services of the grantee. *This inducement is carefully put forth in the title papers.*"

He further said: "It (consideration of personal merit) is *an acknowledgment* of a just and equitable claim."

He also speaks of Alvarado's inability to furnish a map, and the reasons assigned therefor, as being officially admitted.

The whole of this portion of the opinion proceeds upon the ground, that the governor's recitals in the grant were to be taken as true. The consideration of personal services, the compliance with the laws and regulations, and the admissions that no map could then be made, all rested upon the recitals or statements which were found in the grant. The CHIEF JUSTICE could not have used this language, if the court had not been fully of opinion that the recitals found in the deed were to be taken as prima facie true.

In *Reading's* case, (18 H., 1, pp. 8, 9,) in delivering the opinion of the court, WAYNE, J., said: "But the fact of Reading's naturalization is not an open question in this cause. The record *admits* the regularity and genuineness of his documentary title for the land. The *admission* is good for all the *necessary recitals in them, as it is for the main purpose for which they were inserted in those documents.* That was a grant of the land. *These recitals were those requisite conditions* stated in the second and third paragraphs of the decree of November 21, 1828, concerning which the governor is enjoined to seek information, which, when affirmatively ascertained, make the foundation of the governor's exercise of his power to grant the vacant lands.

"In his petition for a grant, Reading says he is a native of the United States, and had resided in the country since 1842. The governor states him to be a Mexican citizen by naturalization in the grant, and 'that as the proper proceedings and investigations had been previously complied with, according to the provisions and laws and regulations concerning the matter,' he, in virtue of the authority

vested in him, grants the petitioner the land known as Buena Ventura. * * * Now, this is not merely the language of clerical formality, though it might be the same from usage in like cases; but it is *the declaration of the governor's official and judicial conscience*, that his power to make the grant has been used in a fit case for the approval of the departmental assembly, or for the decision of the supreme executive government, in case the action of the assembly should make it necessary for him to carry it there for its decision. *We consider it conclusive of the fact of the petitioner's Mexican naturalization, precluding all other enquiries about it, in our consideration of this case by the record.*"

Here, the recitals by the governor in the grant, are held to be conclusive upon the court, as to a question of fact, to wit, whether Reading had been naturalized, so as to become a Mexican citizen. If they are conclusive as to such a question, they must be so as the question wherein a petition had been presented, and investigations had. There can be no reason why the recitals shall be deemed evidence in the one case and not in the other.

In *Peralta's* case, (19 H., 343,) GRIER, J., said: "We have frequently decided that the public acts of public officers, purporting to be exercised in their official capacity, shall not be presumed to be usurped, but that a legitimate authority had been previously given, or subsequently ratified. To adopt a contrary rule would lead to infinite confusion and uncertainty of titles. The *presumption arising from the grant itself makes it prima facie* evidence of the power of the officer making it."

If, from the grant itself, the *power* to make it can be presumed from its recitals, the conformity to the requirements of authority certainly ought to be presumed from the like recitals. It is more rational to presume an honest and fair exercise of a power, than to presume the existence of the power itself from mere recitals. It is absurd to presume the principle matter in question, and not to presume the more subordinate one.

If a Mexican surveyor had written out and signed a survey, or a magistrate recited in a paper signed by him, that he had put the party in possession, or a magistrate had certified a report in favor of granting, the facts so stated would be taken as true without further proof. This is true as to United States surveys.

In *Doe vs. Wilson*, (23 How., 457, p. 463,) this court said in relation to the recital in Pet-chi-co's patent issued by the United States under an Indian treaty: "*The recitals in the patents conclude all controversy in this point*"—the point of location.

If such a recital in a United States patent is conclusive, there can be no good reason why it should not be equally effective when found in a Mexican grant. This same rule of law should apply to both. But we only ask in this case the recital to be taken as prima facie true, and, if the Government disputes its truth, let it be required to

make such proof, as would be required between private suitors. If it avers fraud or wrong, which this court has held must be proved, and cannot be presumed, let it prove it. Let the rules of evidence in California land cases be the same as in all other cases.

The present controversy is between parties, both claiming under Mexico, the original owner. The claimants under a grant made in 1846, and the United States under a treaty made in 1848.

The recitals by Mexico in the oldest grant are binding upon those claiming under the younger conveyance. The latter took with presumed notice, and is bound by the recitals as Mexico would have been, unless she showed fraud in her official. There can be no presumption of fraud against Mexico, because she gave away her land, and would have given Castro a grant for the asking. There could be no fraud against the subsequent grantee of Mexico, because that grantee then had no rights, nor could it be presumed it ever would have. Then the recitals stand unimpeached, and are binding. If a charge of ante-dating the grant is made to defeat the recitals, it rests upon the party making it to sustain it by legal proof. This record shows none whatever. Hence, the United States are bound by the recitals, they being made near two years before they acquired any rights.

SECOND. *The governor had a right, in construing Mexican law and customs, to dispense with a map.*

In *Fremont's* case, (17 How., 542, 544,) it appears from the petition of Alvarado, that he presented no map, and assigned as a reason, that the land was in a "wilderness country on the confines of wild Indians," but promising thereafter to furnish one. Objection was taken, because a map was not furnished. But the court held that the objection was not well taken. In the opinion, the CHIEF JUSTICE said:

"According to the regulations for granting lands, it was necessary that a plan or sketch of its lines and boundaries should be presented with the petition; but, in the construction of these regulations, the governors appear to have exercised a discretionary power to dispense with it, under certain circumstances. It was not required in the present instance. * * In deciding upon the validity of a Mexican grant, the court could not, without doing injustice to individuals, give to the Mexican laws a more narrow and strict construction than they received from the Mexican authorities, who were entrusted with their execution. It is the duty of the court to protect rights obtained under them, which would have been regarded as vested and valid by the Mexican authorities. And as the governor deemed himself authorized, under the circumstances, to dispense with the usual plan, and his decision, in this respect,

was sanctioned by the officers entrusted with the execution of the law, it must be presumed that the power he exercised was lawful, and that the want of a plan did not invalidate the grant."

The CHIEF JUSTICE says, the furnishing a plan or map is "a condition precedent," which the court held might be dispensed with. If it could be dispensed with by the governor, under his official and judicial conscience, in that case, he had the right to do it in the present case. Under the opinion, it was a question for his conscience, and not that of this court; and his decision is to be followed as a binding exposition and construction of the law.

THIRD. *The not taking possesssion prior to* 1849, *is no evidence of abandonment, and does not defeat the grant.*

The present grant purports to have been made on the 4th of April, 1846, and actual possession was taken in the fall of 1840.

In *Fremont's* case, the grant was made early in 1844, and no possession taken until 1849.

In the latter case, Alvarado, the grantee, remained two years in California without attempting to occupy, and then was prevented by the war through 1846, and in February, 1847, conveyed to Fremont, who was engaged in the war until some time in 1848, when it ended.

The evidence of the hostile feelings of the Indians was the same in that case as in this.

But the court held, that the grant could not be forfeited for the non-performance of conditions subsequent, *unless denounced by another.*

In *Fremont's* case, (17 How., 560,) the CHIEF JUSTICE said: "The main objection on this ground is the omission to take possession, to have the land surveyed, and build a house on it within the time limited in the conditions. It is a sufficient answer to this objection to say, that negligence in respect to these conditions, and others annexed to the grant, does not, of itself, always forfeit his right. It subjects the land to be *denounced by another;* but the conditions do not declare the lands to be forfeited to the State upon the failure of the grantee to perform them. * * * But, as between him and the government, there is nothing in the language of the conditions, taking them all together, nor in the evident object and policy, which would justify the court in declaring the land forfeited to the Government, where no other person sought to appropriate them, and their performance had not been unreasonably delayed."

In *Larkin's* case, (18 How., 553,) the same rule was approved and applied.

Clearly, there was no *unreasonable* delay on the part of Castro.

He did not receive his grant until sometime in May; and in July the war broke out, and the Mexicans were expelled in August. The war continued until the forepart of 1848, so that he could not return and occupy the land. There was no more reason for his going upon the land than there was that Alvarado and Fremont should go upon Mariposa. From the time the Americans controlled, (August, 1846,) Mexicans were necessarily excused from performing conditions of settlement.

When the war ended, the treaty protected all the rights of the absentee Mexicans, and no further possession was needed, or required, to secure them. If Fremont's and Larkin's cases are law, Castro's rights were not forfeited for want of occupation. There is not a particle of evidence of abandonment. *The treaty was designed to protect those who were not actual occupants.*

After provisions for those settled in California, the treaty provided for absentees, as follows:

"8th Art., § 3. In the said territories, property of every kind, now belonging to Mexicans, not established there, shall be inviolably respected."

The treaty was concluded early in 1848, and within less than two years from the date of this grant, and was designed to protect those who, though having lands and other property in California, were not then established and living there. Castro had gone to Mexico, and did not reside in the territory. It met and provided for his case. After confirming the grant in Fremont's case, where there had been no possession for five years, and the grantee never saw the land, no one can say that non-occupation for less than two years, can be evidence of abandonment. When the treaty was made it protected him, so that loss, on his part, and acquisition by the government, on the ground of abandonment, could not afterwards occur.

In *Sutter's* case, (21 How., 178,) this court said: "We know of no law of the United States which authorizes us to pronounce a sentence of forfeiture for an act or omission since the date of the treaty."

FOURTH. *The recording of titles granted being the duty of the officer after the grant was made, if omitted by him, cannot defeat the title of the grantee, nor create a suspicion against it.*

It is insisted by the claimant, that the title in this case was recorded in the *usual* manner.

But, in truth, there never was a record of grants kept, in conformity with the requirements of the regulations of 1828, except from the 22d of May, 1833, to 9th May, 1836, which was under Gov. Figuerroa. (Jones' Rep., p. 82.) The regulation is in these

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words: "9. The necessary record shall be kept in a *book*, destined for the purpose, of all the *petitions* presented and *grants* made, with the *maps* of the lands *granted*, and the circumstantial report shall be forwarded quarterly to the supreme government."

After 1836 this regulation was never complied with; and no case is remembered, before this court, which showed a record from such a book as the regulations required. It has seldom happened that the whole grant has been found in the espediente. Usually there is nothing but an order to make out the proper title. In all such cases the grant itself is the only possible evidence of its terms and conditions.

There is no regulation which required an *index*, such as that said to be kept by Jimeno or others. Books or memorandums, though kept by a public officer, if not required by law to be kept, are not public records, and are no more evidence than their private letters. Their duty did not require them to make or keep them, and not finding an entry in a certain case there, does not raise a presumption that no grant was actually made.

There is no regulation concerning the disposition or preservation of the petition, reference and report, if any, or the order directing a grant, or the draft of the grant itself. In practice, they seem to have remained with the secretary. But this was required by no law. If the *record book* had been kept up, as began under Figueroa, as it ought to have been, these *papers* would not have been of any use, as the book would show everything. If the grant itself is not the best evidence of the concession, then these papers should have been attached to it and handed the grantee, to make out and show his legal title, both as between him and the government, and between him and others.

If recording in the secretary's office was a matter of official duty, certainly that duty devolved upon the *official*, and not upon the *grantee*. That record could not be made until the grant was completed. The omission of the official cannot prejudice the grantee. This principle has been settled by this court.

In *Fremont's* case, (17 How., p. 563,) referring to the want of confirmation by the departmental assembly, the CHIEF JUSTICE said: "And the omission or inability of the public authorities to perform their duty, cannot, upon any sound principle of law or equity, forfeit the property of the individual to the State. It undoubtedly disabled him from obtaining what is called a definitive title, showing that all the conditions had been performed; but it could not divest him of the right of property he had already acquired by the original grant, and revest it in the State."

In *Reading's* case, (18 How., p. 7,) the question of the non-approval by the assembly was considered. The 6th regulation of 1828 required, in cases of rejection, the governor to report to the supreme government, forwarding the necessary documents. On

this subject the court said: "But if the governor failed to transmit the documents, from any cause whatever, the grantee's title continued to be just what it was when the grant was given. Nor could the neglect or refusal of the governor to transmit his grantee's document of title to the assembly take from him his right in the land."

If the neglect of the governor, in regard to certain requirements of the law, could not defeat or affect the rights of the grantee, certainly a similar neglect to record or preserve papers could not defeat or affect him. When a grant is once made, it can only be defeated by the act or omission of the grantee, and no default of a public officer can change his rights or subject them to doubt.

FIFTH. *The Mexican law did not require that the governor should refer the petition to a third person, or magistrate, for information.*

1828. "3. The governor shall proceed immediately to obtain the necessary information, whether the petition embraces the requisite conditions required by the said law of the 18th of August, both as it regards the land and the candidate, in order that the petitioner may at once be attended to; or, if it be preferred, the respective municipal authority may be consulted whether there be any objection to making the grant or not.

"This being done, the governor will accede or not to such petition, in exact conformity to the law on the subject, and especially to the aforementioned one of the 18th of August, 1824."

Jones, in his Report, (p. 82,) says: "It was not unfrequent, of late years, to omit the formality of sending the petition to the local authorities; and it was never requisite, if the governor already possessed the necessary information concerning the land and the parties. In this case the grant followed immediately on the petition."

In the present case, the record does not show a reference and report. None were needed. The governor knew Castro as the chief military officer, and could not need information as to him personally. He must have known of Castro's expedition to the San Joaquin in 1844, and that the whole country was wild and unsettled, and that the grant asked for could not interfere with any other claim. A reference would have been useless, because no one probably knew more of that wild country than the governor did.

But the recitals in the deed are sufficient for our purpose, and they state, as in *Reading's* case, that the "requisite conditions" (or "necessary investigations") had been complied with. The latter recital must be as effective as the former.

SIXTH. *The grantee was entitled to receive the grant and retain it, and this is evidence in favor of his title, until overthrown by proof by those questioning it.*

The regulations of 1828 provide concerning the possession of the grant in the following words:

"8. The definitive grant asked for having been made, a *document signed by the governor shall be given, to serve as a title to the party interested,* wherein it must be stated that the said grant is made in exact conformity with the provisions of the laws, in *virtue whereof possession shall be given.*"

The present grant is one under which the grantee is authorized to enter upon the land, and, of course, *precedes* the performance of conditions subsequent. These can only be performed after the right of entry is conferred. This paper was the grant, and only grant, and could only be defeated by acts or commissions which shall authorize another to denounce it.

This is so stated in the grants themselves. In the *Fremont* grant, it is stated: "Therefore I command, that these presents be held firm and binding, and that the same be registered in the proper book, and delivered to the interested party, for his *security*, and other purposes." This is the expression in *Ritchie's* case, (17 How., 536,) and in nearly every case reported. It is the form used in the present case, saving a difference of translation—"protection" taking the place of "security."

Was this language a cheat upon the grantee? The official gave him what he called a grant, with its terms and conditions, for his "protection" or "security," under which he might enter, possess, devise, or convey. Grantees went upon the land, lived there their lifetime, or sold. Can such persons be now told all this is mere idle form; that it does not protect the grantee; that if his title is drawn in question, he must not rely upon his grant as evidence, but must go hundreds of miles, and find the archives, and, if there is no evidence there among the old papers preserved, he must be defeated, unless he can prove that, long years ago, there were a petition, reference and report, and an order for or the draft of a grant there, and, in addition, that the governor had certain entries made in certain books? If the required papers are not there, can any one suppose that proof, in one case in fifty, can be made of the existence and contents of such papers, or that the destruction or loss can be proved in one case in a hundred?

These grants, when made and delivered in law, stand just where the old French and Spanish grants stood, and where our land patents stand, in neither of which has any such proof ever been required.

The grant itself is not *secondary*, but it is *original* evidence, and the best within the power of the party, and all that can be rea-

sonably required. It is all that is required of ordinary suitors, and this is all that can rightfully be required when the Government is a party. If those representing the Government suspect and set up a fraud, let them prove it, as in other cases, as a matter of fact, and not impose upon the claimant the task of showing that none could have been committed. The Government asks that a new rule of evidence, one of the most onerous and burdensome character, shall be introduced in these California land cases, which can apply nowhere else. This can only be done by Congress, if it can be done at all. Its effect will be to defeat claims, otherwise good and protected by the treaty with Mexico, by declaring that not to be evidence, which, under the common law, and the uniform practice throughout the Union, and in Spain and Mexico, has heretofore been esteemed good and competent evidence, and conclusive, unless impeached by the other side.

This court is bound to treat, in these cases, as evidence, whatever would have been esteemed competent evidence by the Mexican tribunals.

The act of 1851, under which these cases are tried, clearly contemplates this. It provides that the board and courts shall be "governed by the treaty of Gaudalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court, as far as they are applicable."

There is nothing in the treaty, the law of nations, the laws, usages, or customs of Mexico, or in the decisions of the Supreme Court, before this law was passed, authorizing this proposed change in the rules of evidence. On the contrary, as far as the question had been acted upon, it had always been held, that the production and proof of what purported to be an original grant, made by an authorized official, was sufficient, and no additional record evidence from archives was held to be necessary; but whoever sought to defeat the effect of this prima facie evidence, must do so by competent legal proof. This rule cannot be now changed without violating this statute law.

SEVENTH. *This case conforms to the propositions laid down in Castro's case,* (24 *H., p.* 850,) *in relation to the introduction of secondary evidence.*

It shows:

1. That, at a former time, there was a grant recorded in the usual manner in the secretary's office.

2. That some of the books and papers have been lost and destroyed.

3. There was actual possession within a reasonable time, and a survey by the owner.

a. The actual possession was as early as Fremont's.

b. There was the same excuse for delay in taking possession.

c. The same excuse for not making a plat.

d. The same excuse for not obtaining judicial action in locating the tract.

It is distinguishable from Castro's (24 *H.*, 343) *in the following particulars:*

1. In that case the handwriting of Pico and Moreno was proved by only one witness.

In this they are proved by five, including Pico and Moreno themselves.

2. In that case no proof was offered as to when these signatures were made.

In this it is proved that Pico signed on the 4th of April, 1846, and Moreno before the 4th of May, in that year.

3. In that case there was no evidence of what became of the grant when completed.

In this it is shown to have been given to the agent of Castro at the time.

4. In that case nothing was produced to support the grant but the document itself.

Here there is proof of the existence and loss of books and papers, and of the espediente, or papers in Castro's name, found among the archives, and carried away and lost by Fremont among the mountains.

5. In that case no one testified to having seen the grant until it was filed in the archives in 1854.

In this case it is proved that it was seen by the officers who signed it when they placed their signatures to it.

6. In that case there was no evidence of the time or place of the execution of the grant.

In this case it has been proved by two witnesses.

7. In that case the witnesses called to prove possession contradict each other.

In this case they do not. Two prove a temporary possession before the grant, while Castro was on military duty, and the others prove possession after the grant, which has been since continued.

8. In that case it was thought the grant had been ante-dated.

In this case it has been proved that it was not so.

This case is wholly different from that of Morehead, administrator of McKnight, decided at the present term—

1. In that case, it was clearly established that the imputed

grantee was not at the place where the grant purports to have been made, at or near the time of its date, and probably was never there.

2. He often admitted that his title was only the Sutter general title.

3. He asserted, in his lifetime, that his title was lost, and he feared he should lose his land. No title was found among his papers, as sworn to by his administrator, but still a grant was produced afterwards without evidence where it came from.

4. The agent of the claimant boasted that he had got up title papers as good as any persons.

5. There was a petition and grant refused, on a report that there was another claimant to the land, and this report was altered, years afterward, and attempted to be made the foundation of a grant.

From all this evidence, it was clear that the assumed title was forged, fraudulent, and void.

Not one of these objections occur in the present case, in which the facts are all consistent with the claimants theory that the grant is genuine and valid, and without the shadow of a suspicion rightfully resting upon it.

It is submitted, with confident belief, that no case has been decided which is adverse to the confirmation of this claim; but, on the contrary, that numerous cases herein cited show that it ought to receive the confirming action of this court.

R. H. GILLET,
Of Counsel for Respondent.

Dated February 5, 1862.

IN THE SUPREME COURT

OF THE UNITED STATES.

THE UNITED STATES, APPELLANTS,

vs.

ROBERT B. NELIGH, No.

LAND CLAIM FROM CALIFORNIA.

On Appeal from the Southern District of the U. S. District Court.

BRIEF OF V. E. HOWARD, FOR APPELLEE.

Claim founded on a Grant of Governor Pio Pico to Gen'l José Castro, dated April 4th, 1846.

Confirmed by the District Court for Six Leagues.

SAN FRANCISCO:
WHITTON, WATERS & CO., PRINTERS AND PUBLISHERS.
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A claim for a portion of this grant was before this Court at its last term, and rejected because it did not appear that the colonization law had been complied with.

It is proper to say this case was closed and decided in the Court below, previous to the decision of the Supreme Court. The genuiness of the grant is established by J. J. Warner, J. D. Stevenson, R. S. Den, John W. Shore,

keeper of the Spanish Archives in the Surveyor General's office, by Pio Pico, himself, and by his Secretary, Jose Matias Moreno, who signed it on the 1st of May, 1846, and recorded it in the book of record kept for that purpose.

The Espediente was taken out of the Archives in the latter part of 1846, by John C. Fremont, (as testified to by him,) and lost in the mountains of San Juan.

The Grant states that a petition was presented for this Ranch. Pio Pico testifies that he does not remember of ever making a grant without a petition being presented, and Fremont swears positively, that he took from the Archives a title to a grant referring to Gen. Castro, or the papers in reference to a title, and lost them in the mountains of San Juan. Neither the Land Commission nor the Archives show any other formal grant to Gen. Castro, for any Ranch in California, excepting for this San Joaquin Ranch, which could or would have had an expediente, or any papers in reference to it in the Archives.

Hence the fact of their having been an Expediente in this case, and its loss is fully established. In the early days of California, it was as much as a grantee could do to keep possession of his original grant, without being obliged to look after the Archives of the government, which were never in his possession, and over which he had no control or supervision.

The grant we produce is the original grant, which after being executed and recorded, was always delivered to the

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party in interest, (the grantee.) It never was filed in the Archives. The only positive evidence that a grantee has of his ownership to the land, is the original grant in his possession. Very few of the original grants to lands delivered to the grantees in California, were ever filed in the Archives or U. S. Land Commission until 1852 or 1853. They did not belong to the Archives and were only filed to save them from being lost, and as a proof to be used before the U. S. Land Commission of the title of the grantees. In fact they were mostly filed by the claimants, as proof of their claims before the U. S. Land Commission and in this way they passed with other papers in these claims, such as depositions, deeds, &c., into the Archives, where they were placed after the Commission was dissolved, in 1856. So that in fact they were never placed in the Archives until seven years after the Grant in this case was filed.

The duplicate copy or rough draft of the original Grant with the petition &c., was all that ever was filed in the Archives. This constituted the Expediente, and is what Fremont carried off and lost as shown by his deposition, belonging to Castro, and pertaining to this Grant and Ranch. The well know method of making grants appears from the certificate of Mr. Hopkins, the keeper of the Archives, and has frequently been made evidence by the testimony of the Mexican Governors in these cases. The Grant recites that the grantee applied by petition and such a recital was held evidence in the case of J. A. Sutter, (21

Howard,) of the fact recited. It is also proved in this case beyond a reasonable doubt by Pio Pico. The Secretary, Moreno, testifies that the Grant was duly entered in the Registry Book, the loss of this book is proved as well as the loss of the Expediente, beyond the possibility of a doubt.

It is therefore established that all the requirements of the colonization laws for the granting of land have been complied with in this case. The Secretary explained that the grant was not signed by him and delivered out until some time in the first of May, 1846. This was owing to the absence of a Secretary until the appointment of Moreno. The facts as detailed by the Secretary are strong evidence of the integrity of the Grant. Indeed the Grant was well known anterior to the Mexican war, and there is no ground to question its regularity and fairness.

There is no doubt that the grant in this case is sufficiently certain as to Boundary. It will not be questioned that the foot of the mountain and the San Joaquin river are sufficiently certain as locative calls, and points for the commencement of the survey of the grant for a certain quantity. The survey is "to be commenced from the edge of the Snowy Mountains following down stream" on the San Joaquin river. The third condition of the Grant shows that both banks of the river were to be included, it declares "the Judge who may give the possession shall have it measured with entire observance of the ordinance

and in view of the sketch, or topographical plan which the grantee shall present." It will appear that the grantee was excused from presenting the map, at the time the grant issued. The power of the Governor thus to excuse the map, was settled in the case of U. S. vs. Fremont, (17 Howard.) Castro was by the terms of the grant only required to present a map to the officer who shall make the survey or give the judicial possession. The only object of the map was to aid in the location and there could be no trouble on that subject, as the survey must have been located according to the mountains, either with or without the map. Indeed a map according to the grant could only have located the land at the foot of the mountains and extending down stream for quantity. In this case the map could not have controlled the objects designated in the grant. The colonization law and the regulations of 1828, do not require the map to be presented with the petition or to precede the grant. Under the usage and custom of the office the map was often directed to be furnished after the grant had issued. Usage and custom are not only recognized by the Act of Congress, but especially by the case of Cambuston, (20 Howard,) as a modification of the law. That usage and custom had that effect under the Mexican and Spanish law is well settled by their writers, Eschrie, Verbo, Costumbre. We maintain that the map in this case was not necessary to description or boundary, but if necessary was furnished in season, as early as was required by the terms of the

grant. It is apparent from the testimony of the Surveyor, Lewis, that either with or without the map, the grant could not be located but in one way, and that there can be no difficulty or mistake as to its location. In U. S. vs Vaca, 18 Howard, 556, it was held that the recitals of the grant were sufficient as to map.

It appears from the testimony of Jose M. Pico and Alvarado, that Castro took possession of the land not only under a verbal promise of a grant, but that the promise, as Alvarado states, was repeated in the written instructions of Micheltorena.

The Spanish and Mexican governments respected Verbal Grants, or contracts for the grant of land when followed by possession. They were binding as a part of the usage and custom. "Strother vs Lucas, 12 Peters;" "Landry vs Martin, 15 Louisiana."

In this case the contract of the Governor to grant the land, was in the written instruction of Micheltoreno.

There can be no quetion as to the fact of possession in this case. Castro built a house and placed four hundred head of cattle upon the land in 1844. This occupation as to cattle, it is fair to presume, continued. It is in proof, that during the years 1845 and 1846, Castro was personally in the Mexican Army, engaged in the public service. In the summer of that year, he was by the fortunes of war compelled to leave the country, and was not, therefore, able to return until after peace in 1848.

In that and the following year he resumed the personal

occupation and improvement of the Ranch claimed in this case. Castro was thus one of the Mexican citizens expressly protected by the treaty. As the grant was made in the Spring of 1846, it would have been sufficient if he had commenced the occupation after the ratification of the treaty and its promulgation in California. Indeed, under the peculiar language of the treaty, he might have sold the land without any occupation whatever. He availed himself of the provisions of the treaty by selling out his grant to *native Americans*. The 8th Article of the treaty declares, that "Mexican citizens shall be free to remain or to remove to Mexico, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please," &c. . . . . "In the said territories property of every kind now belonging to Mexicans not established there, shall be invariably respected."

Castro preserved his character of Mexican citizen and was Governor of Lower California in 1859, the time of his death.

It cannot be denied, that in the actual condition of the country, from the time of the commencement of the war until the return of Castro from Mexico, it would have been impossible for him to have occupied his land. He was prevented by the enemies of the country, so far as Mexican citizens were concerned. The distracted condition of the country was recognized in the case of Fremont as a sufficient excuse for not complying with the condi-

tion of occupation during its continuance. The occupation in 1848-9, would be a good performance independent of the treaty provisions made for the relief of persons in the condition of Castro, Arredondo vs. U. S. 6 Peters.

The proof shows, that after the breaking out of the war he could not have occupied the land at an earlier day, owing not only to the hostilities existing between the U. S. and Mexico, but also to the hostilities of the Indian tribes, greatly increased as to Mexicans, by the existence of war. Such also is the well known historical fact as shown in Fremont's case, with reference to the region of country where this grant is located. It may be true that mere Indian hostilities, which existed at the time of the grant, or were liable to break out at any time, would not be sufficient excuse for the non-occupation of a grant. But when those disturbances are produced, or in any way instigated, or increased by foreign war, the case is quite different, as held by this Court in the Fremont dicision.

In view of the disturbed condition of the country, and the fact that Castro was driven from the country by war, and that the ratifications of the treaty were not finally exchanged until July 4th, 1848, the re-settlement of the Ranch in 1849, was in a reasonable time, if there had been no earlier occupation. Although it is not recited in the Grant, it is in proof, that one of the considerations was the services rendered to the Government by the grantee.

Alvarado testifies that it is the same tract of land of which Michelterena promised Castro a Grant for military and civil services.

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These services have been held a good consideration for a Grant both in the cases of Fremont and Larkin, and entitled the grantee to a favorable consideration and preference under the Colonization Law. 18 Howard, 562. It will be observed, that the grant does not require the grantee to build a house, nor designate the time within which he shall take possession. No doubt the reason of this was, that the grantee was already in possession and had constructed a house on the premises.

The eleventh section of the regulations of 1828 did not require the Governor to designate in the grant itself the time in which the party should take possession. In practice it was generally done, but also often omitted, as the archives will prove. When omitted in the grant, all that could be required of the grantee would be to take possession in a reasonable time.

Under all the circumstances, 1849 would be a reasonable time. The disturbed condition of the country has been held by the Court as a good excuse for the non-performance of conditions. U. S. vs Vaca, 18 Howard, 556; Fremont, 17 Howard, 542.

It has also been held by this Court, that the colonization laws required no particular form of conditions in grant, and that the Governor might dispense with them, and that it was in time to take possession of the grant as soon as the condition of the country would safely admit of occupation. U. S. vs Segui, 10 Peters, 306 ; U. S. vs Sibbald, 10 Peters, 322 ; U. S. vs Larkin, 18 Howard, 562.

In last case, page 563, the court says: "There appears to have been no uniformity in the conditions, &c." "It is understood the condition (of possession) was usually dispensed with in cases where the grantee was in actual possession at the time of the grant. It was probably dispensed with in the present case, as the grantee was the Secretary of the Territory, and his services required at the seat of government; especially as it appears that a civil disturbance had broken out between the political authorities, and which continued down until possession was taken of the country by the United States in 1846 and 1847."

On the whole view of the case there can be no reasonable doubt of the integrity of the grant. The claimants have shown a strong equity, clearly entitled to confirmation.

No attempt was made in the court below to disprove the genuineness of the grant, or the possession of the grantee in 1844 and 1849. Both the grant and the possession were too well known in the country to admit of such an attempt. It cannot be done in this court. U. S. vs Larkin, 18 Howard, 561.

There can be no boubt that the colonization law was substantially complied with in relation to this grant.

1. It appears sufficiently from the grant itself and the deposition of Pio Pico, that there was a petition in this case.

2. The production of the map until a future day was excused by the Governor in the grant.

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3. It appears from the depositions of the Governor and Secretary, that the grant was delivered early in May, 1846.

4. It appears from the grant, that the grantee was in the military service when the grant was made, and therefore entitled under the law.

5. That the grant was promised by Micheltorena in 1844, in writing, for civil and military service.

6. That the grant was duly registered by the Secretary in the book of 1846, which is lost.

7. That the Expediente of a grant to Gen. Castro, was lost by Gen. Fremont, in 1847, and that there was no other grant than this of which it could be the Expediente.

8. That possession was taken of the grant and a house built in 1844, and that it was re-occupied by Castro after his return in 1848, to California from Mexico.

V. E. HOWARD,

FOR APPELLEE.

APPENDIX.

I hereby certify, that I am, under the Surveyor General of the U. S., for California, keeper of the Spanish Archives in his custody, as such Surveyor General; that I am conversant with the Spanish language, and familiar with the laws and customs regulating the manner of obtaining land grants under the former Spanish and Mexican governments of California; that it was customary for the party desiring a grant, to make his petition to the proper authority, upon this petition, the necessary proceedings were had to satisfy the Governor that the petitioner was entitled to a grant, and that the land asked for, was in a condition to be granted, and when this was the case, the title deed (despacho) was issued, signed by the Governor and the Secretary of State, and *delivered to the interested party for his security*, a copy of this document being attached to the proceedings (Expediente) had in obtaining said grant, as the concluding paper to said proceedings. The Expediente was then filed in the office of the Secretary of State, as the government record of the grant, the *grant itself* remaining in possession of the grantee. The original signed grants, now in the custody of the Surveyor General, with a very few exceptions, were in possession of the grantees, until they were presented for confirmation before the U. S. Board of Land Commissioners.

R. C. HOPKINS,

KEEPER OF ARCHIVES.

SAN FRANCISCO, October 20, 1861.